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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

B340654

Plaintiff and Respondent,

(Los Angeles County
Super. Ct. No.
MA073477-02)

v.

CHRISTOPHER LAMAR
BRANDON,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Reversed and remanded.

Aimee Solway, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Scott A. Taryle and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Christopher Lamar Brandon appeals from the trial court's order denying a petition for resentencing under Penal Code section 1172.75.¹ We reverse and remand.

II. PROCEDURAL HISTORY

A. *Prior Appeal*

In 2019, a jury found defendant guilty of first degree murder (§187, subd. (a), count 1); first degree robbery (§ 211, count 2); and possession of a firearm by a felon (§ 29800, subd. (a)(1), count 3). The jury also found true: robbery and burglary special circumstance allegations (§ 190.2, subd. (a)(17)(A) & (G)); a personal use of a deadly weapon allegation (§ 12022, subd. (b)(1)); and a personal infliction of great bodily injury allegation (§ 12022.7, subd. (a)). (*People v. Brandon* (Nov. 1, 2021, B300932) [nonpub. opn.] (*Brandon I*.)

On September 23, 2019, the trial court sentenced defendant on count 1 to life without the possibility of parole, plus a one-year enhancement pursuant to section 667.5, subdivision (b); on count 2 to a high term of six years, plus an additional one-year term for the personal use of a weapon enhancement, and a three-year term for the great bodily injury enhancement, all of which the court stayed; and on count 3 to a consecutive two-year middle-term sentence. (*Brandon I, supra*, B300932.)

On November 1, 2021, a prior panel of this division issued the unpublished opinion in *Brandon I, supra*, B300932, affirming

¹ All further statutory references are to the Penal Code.

defendant's conviction and remanding the cause to the trial court to, among other things, "strike the one-year section 667.5, subdivision (b) enhancement imposed on [defendant's] sentence . . .".

On December 13, 2021, defendant filed a petition for review with the California Supreme Court.

On December 28, 2021, the trial court called the matter "for hearing on remittitur." The court stated that it was "in possession of the remittitur [sic] filed November 1, 2021[,] . . . [and] as to [defendant] . . . will strike the one-year [section] 667.5[,] subdivision (b) enhancement imposed in his sentence . . .".

On January 26, 2022, the Supreme Court denied the petition for review and on January 31, 2022, we issued the remittitur in *Brandon I*.

On February 3, 2022, the trial court issued an amended abstract of judgment that omitted the one-year section 667.5, subdivision (b) enhancement.

B. *Resentencing Hearing*

On January 17, 2023, the trial court issued an order, stating that, "[p]ursuant to . . . section 1172.75[, subdivisions (a) and (b)] . . . , the Secretary of the Department of Corrections and

² Section 1172.75 provides:

"(a) Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code is legally invalid.

Rehabilitation [(CDCR)] has identified [defendant's case] as one in which . . . defendant may qualify for relief pursuant to [Senate Bill No.] 483^[3]. [¶] Pursuant to . . . section 1172.75[, subdivision](c) . . . the court has verified that the current judgment . . . includes 1 sentence enhancement[] of [one] year, pursuant to . . . section 667.5[, subdivision](b). [¶] Therefore, the court will recall sentence, and resentence . . . defendant, in accordance with . . . section 1172.75[, subdivision](d)(1) . . .”

“(b) The Secretary of the [CDCR] and the county correctional administrator of each county shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person’s date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement . . .”

“(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentencing enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant . . .”

“(d)(1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.”

³ Senate Bill No. 483 added sections 1171 and 1171.1 to the Penal Code (Stats. 2021, ch. 728, § 3, eff. Jan. 1, 2022), which, effective June 30, 2022, was renumbered section 1172.75. (Stats. 2022, ch. 58 (AB 200), § 12, eff. June 30, 2022.)

The trial court appointed counsel to represent defendant and advised that, “[i]f the parties stipulate to waive the resentencing hearing, the court’s intention would be to strike the one-year enhancement. If there is no such waiver, the case will be set for a resentencing hearing.” The court set a “status conference and/or resentencing hearing” for “February 15, 202[3].” (Boldface omitted.)

Following the January 17, 2023, hearing, the trial court issued a series of orders continuing the resentencing hearing.

On August 2, 2023, the trial court called the matter for a hearing at which defendant, presumably in response to the court’s inquiry as to whether the parties waived their right to a resentencing hearing, requested a full resentencing hearing.⁴ The court then continued the hearing on numerous further occasions.⁵

On July 11, 2024, while the continued hearing was still pending, defendant filed a motion for a “full resentencing” pursuant to section 1172.75. Defendant noted that the CDCR had notified the trial court that defendant was eligible for resentencing under section 1172.75 and requested that the court conduct a “full resentencing under the guidelines set forth in [section] 1172.75[, subdivision](d).” Defendant acknowledged that on December 28, 2021, the court struck the one-year enhancement on count 1, but requested further reductions in

⁴ The record does not include a reporter’s transcript of the August 2, 2023, hearing.

⁵ The court referred to the pending hearing variously as having been scheduled pursuant to “1172.7,” “1172.6(a),” and “1172.7(a)/1172.75(a).”

defendant's sentence so that defendant's aggregate term would be 26 years in state prison.⁶

That same date, the trial court conducted a hearing and stated: "We are here for a resentencing. The court had set it for [a section] 1172.75 resentencing inadvertently because simply [I] forgot that I had already effectuated that resentencing because I got the petition from the [CDCR] saying he was eligible. I just reset it for a setting. So that was my error." The court then asked defense counsel whether he agreed that on December 28, 2021, the court had "struck the one[-]year enhancement on count 1 reducing the aggregate term by one year. So that's just simply off calendar." Defense counsel agreed that "it's already been completed, yes." The court responded, "[p]ursuant to section 1172.1[, subdivision](c) a petitioner and/or his counsel is not entitled to file a petition seeking relief from the court under section 1172.1. [¶] Accordingly the court denies [defendant's] petition and will take no further action."

Defendant timely filed a notice of appeal.

III. DISCUSSION

Defendant contends that the trial court erred when it denied the section 1172.75 petition without conducting a full resentencing hearing. He does not dispute that, had the court struck the section 667.5 sentence enhancement, he would not be entitled to relief under section 1172.75 but contends that the court's December 28, 2021, order striking the enhancement is null and void for lack of subject matter jurisdiction. According to

⁶ In the same pleading, defendant petitioned for a resentencing hearing pursuant to section 1172.1.

defendant, he therefore was entitled to a resentencing hearing under section 1172.75.

A. *Appealable Order*

The Attorney General contends we must dismiss defendant's appeal because the trial court's order denying "[defendant's] petition under section 1172.1" is not an appealable order.

"The right to appeal is statutory only, and a party may not appeal a trial court's judgment, order or ruling unless such is expressly made appealable by statute. [Citations.]" (*People v. Loper* (2015) 60 Cal.4th 1155, 1159 (*Loper*).) Pursuant to section 1237, subdivision (b), "An appeal may be taken by the defendant: [¶] . . . [¶] From any order made after judgment, affecting the substantial rights of the party." (*Ibid.*, italics omitted.) According to the Attorney General, because orders denying a section 1172.1 petition initiated by a defendant are not appealable, we must dismiss defendant's appeal.

We agree "with the growing body of caselaw concluding a trial court's decision not to take any action on a section 1172.1 request initiated by a defendant does not affect his or her substantial rights." (*People v. Brinson* (2025) 112 Cal.App.5th 1040, 1045; see also § 1172.1, subd. (c).) Here, however, the Secretary of the CDCR initiated proceedings when it identified defendant's case as one in which defendant was entitled to relief under section 1172.75 and so advised the court. (See *People v. Codinha* (2023) 92 Cal.App.5th 976, 987.) On this record, we conclude that the referral from the CDCR was "authorized" and the court's order denying relief is reviewable on appeal.

Accordingly, we deny the Attorney General’s motion to dismiss the appeal.

B. *Resentencing Petition*

As noted, section 1172.75 provides that, “Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5 . . . is legally invalid.” (§ 1172.75, subd. (a).) The trial court concluded that defendant was not entitled to relief because the court, on December 28, 2021, had already struck defendant’s section 667.5 enhancement. That order, however, was issued by the court following the filing of the notice of appeal in the earlier appeal but prior to the issuance of the remittitur.

“Subject to limited exceptions, ‘[t]he filing of a valid notice of appeal vests jurisdiction of the cause in the appellate court until determination of the appeal and issuance of the remittitur.’ (*People v. Perez* (1979) 23 Cal.3d 545, 554; see *People v. Scarbrough* (2015) 240 Cal.App.4th 916, 923.) . . . ‘Remittitur transfers jurisdiction back to the inferior court so that it may act upon the case again, consistent with the judgment of the reviewing court.’ ([*Gallenkamp v. Superior Court* (1990) 221 Cal.App.3d 1], 10.) [¶] Until the remittitur issues, the lower court lacks jurisdiction over the *subject matter* of the order or judgment on appeal. (See *People v. Cunningham* (2001) 25 Cal.4th 926, 1044.) Thus, any order the lower court makes affecting an order or judgment on appeal is null and void if made before the remittitur issues. [Citations.] ‘So complete is this loss of jurisdiction effected by the appeal that even the consent of the parties has been held ineffective to reinvest the trial court with

jurisdiction over the subject matter of the appeal and that an order based upon such consent would be a nullity.’ (*In re Lukasik* (1951) 108 Cal.App.2d 438, 443.)” (*People v. Burhop* (2021) 65 Cal.App.5th 808, 813.)

Because the trial court was without subject matter jurisdiction to strike the sentencing enhancements on December 28, 2021, the court’s order is void and “vulnerable to direct or collateral attack at any time. (*People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 660.)” (*People v. Vasilyan* (2009) 174 Cal.App.4th 443, 450.) Further, because the December 28, 2021, order is void, the only judgment that applied to defendant’s case was the September 23, 2019, judgment that included the section 667.5 enhancement. The court therefore erred when it declined to resentence defendant by striking the section 667.5 enhancement during a new resentencing hearing. (§ 1172.75, subds. (c), (d)(1) and (2); see also *People v. Green* (2024) 104 Cal.App.5th 365, 373.)

IV. DISPOSITION

The July 11, 2024, order is reversed and remanded for the trial court to conduct a resentencing hearing pursuant to section 1172.75, subdivision (c).

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KIM (D.), J.

We concur:

HOFFSTADT, P. J.

BAKER, J.