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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT PAUL CERVANTES,

Defendant and Appellant.

B340109

Los Angeles County

Super. Ct. No.

XSEVA044585

APPEAL from a judgment of the Superior Court of
Los Angeles County, Maria A. Davalos, Judge. Affirmed.

Robert Paul Cervantes, in pro. per.; and Nancy Haydt,
under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Under *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*), we review this appeal of a judgment following a resentencing under Penal Code section 1172.75.¹ We affirm.

BACKGROUND²

In 1998 the People charged Robert Paul Cervantes with the murder of Paul Lynn Fix. The People alleged Cervantes was engaged in the commission of robbery when he murdered Fix. The People also charged Cervantes with robbing Fix. The People alleged Cervantes personally used a firearm in the commission of those crimes. The People also alleged Cervantes had a prior strike for robbery, as well as prison priors.

According to the probation report, the victim owned an electronics business. He was having a large sale at a hotel in Artesia. His advertising flyers listed the items he was selling and said “cash only.”

The victim was helping a customer in the conference room of the hotel when he “felt someone’s hand in his left pants pocket.” He turned to see a man who said, “ ‘Give me your money.’ ” The man had a blue steel revolver. The man took about \$400 from the victim’s left pocket. The man then shot the victim “once in the stomach for no reason.” The victim died in the hospital nine days later.

Witnesses saw the shooting. The shooter ran out the door. One witness chased him. Police eventually apprehended the shooter, later identified as Cervantes. He had \$445 in his wallet and about \$40 in his pocket. Police also found a Smith & Wesson

¹ References to statutes are to the Penal Code.

² We take our factual background from the probation officer’s report dated October 7, 1998.

.38 caliber blue steel revolver that “smelled like it had been recently fired.”

The case went to trial in 1998. The jury found Cervantes guilty of first degree murder as well as robbery. The jury found true the allegations that Cervantes killed Fix while in the commission of robbery and that he personally used a firearm in the crimes. Cervantes waived jury on his priors and, after a court trial, the court found them true. The court sentenced Cervantes to life without parole plus 18 years on the murder count. The 18 years consisted of 10 years for the firearm enhancement, plus five years for the serious felony prior under section 667, subdivision (a), plus three one-year terms under section 667.5, subdivision (b) for the prison priors. On the robbery count, the court sentenced Cervantes to 10 years, calculated as the upper term of five years, doubled because of the strike. The court stayed a 10-year sentence for the firearm enhancement on the robbery count. Accordingly, Cervantes’s aggregate sentence was a determinate term of 28 years, followed by a term of life without parole (LWOP).

At some point—apparently in 2022—the California Department of Corrections and Rehabilitation (CDCR) notified the court that Cervantes was eligible for resentencing under section 1172.75.³ The court appointed counsel for Cervantes.

On September 28, 2023, Cervantes’s counsel filed a “Motion for Full Resentencing,” citing section 1172.75, subdivision (d)(2). Counsel stated, “[T]his court now must conduct a full resentencing considering all ameliorative changes in sentencing law that have occurred since Mr. Cervantes was

³ The record on appeal does not include the CDCR’s notice.

originally sentenced. This includes but is not limited to striking the one-year priors under 667.5.” The prosecution apparently didn’t file an opposition to Cervantes’s motion.

The parties appeared before the court on October 10, 2023. Cervantes’s counsel confirmed he was asking the court, in resentencing Cervantes, to “exercise its discretion to strike the five-year prior and the gun sentence.” The court stated the “file” was “very thin,” and that it didn’t “even have a probation report” or “his C-file.”⁴ The court noted it didn’t “have anything about his behavior in prison,” or “know anything about the facts of the case” or Cervantes’s “prior history before he was sentenced on this case.” Accordingly, the court said, without this “information that [it] would have to consider in order . . . to exercise [its] discretion,” it could do no more than strike the one-year prison priors. The court offered, however, to continue the matter for Cervantes’s counsel “to provide that information to the court.” Counsel accepted the court’s offer.

The parties again appeared before the court on August 6, 2024. Plainly, the court had received additional information. Cervantes’s counsel told the court, “[H]e’s obviously asking for a full resentencing. . . . I think now you have discretion to on the gun enhancement perhaps select a range rather than just the high term, and the court also has the discretion to strike the five-year prior.”

The court acknowledged it did “have that discretion.” The court noted Cervantes had committed another robbery, with a gun, in March 1993, and had been sentenced to seven years

⁴ “C-file” refers to “the confidential correctional inmate files maintained by the Department of Corrections.” (*People v. Landry* (2016) 2 Cal.5th 52, 71.)

in the state prison on that crime. Just over four years later, Cervantes robbed and murdered Fix.

The court said Cervantes's C-file showed he "had multiple state prison convictions," as well as "a lot [of] violations for not following the rules" in the "many years since" that he'd been in prison. These violations, the court observed, were "indicative of somebody who is unable to conform and hasn't really rehabilitated and is currently maybe just starting to rehabilitate themselves after being imprisoned since the 90's." "That's great," the court continued, but the court "believe[d] he still poses a threat to the public."

Having found Cervantes "is still a danger to society by the standard[s] required by law," the court struck the three prison priors but otherwise declined to alter Cervantes's sentence. As for his five-year serious felony prior, the court noted Cervantes's prior strike—referring to the 1993 robbery with a gun—was "so recent."

Cervantes appealed and we appointed counsel to represent him. After "review[ing] the entire record on appeal," counsel filed an opening brief stating she had "not found any arguable issues to raise on appeal." Counsel noted, "An attorney at the California Appellate Project has also reviewed this case." Accordingly, counsel "request[ed] that this court follow the procedures outlined in" *Delgadillo*. Counsel stated she had spoken with and written to Cervantes and "explained [her] evaluation of the record on appeal and [her] intention to file this pleading." Counsel also informed Cervantes of his right to file a supplemental brief.

On December 1, 2025, this court received a letter from Cervantes. Cervantes complains the "behavior" and

“performance” of his court-appointed counsel in the trial court was “unprofessional” and “deficient.” Cervantes says he has participated in self-help groups and trainings, and has “letters of support” and “recommendations from staff.”

Cervantes also complains that his counsel in the trial court, as well as his court-appointed counsel on appeal, erroneously stated his sentence was 28 years plus LWOP. Cervantes insists it was 18 years plus LWOP. Cervantes is mistaken. As both Cervantes’s counsel and the prosecutor explained at the October 2023 hearing—and as both the minute order of Cervantes’s 1998 sentencing and the abstract of judgment confirm—Cervantes’s sentence was a determinate term of 28 years followed by a term of LWOP. On the murder count (count 1), the court sentenced him to ten years for the firearm enhancement plus five years for the serious felony prior plus three years for the three prison priors. On the robbery count (count 2), the court sentenced Cervantes to the upper term of five years, doubled because of the strike prior for a total of 10 years, to be served consecutively to count 1. After the resentencing, Cervantes’s sentence is now a determinate term of 25 years, to be followed by an indeterminate term of LWOP.

DISCUSSION

Under section 1172.75, subdivision (a), prison priors imposed before January 1, 2020 are invalid (unless the conviction was for a sexually violent offense). (*People v. Burgess* (2022) 86 Cal.App.5th 375, 379–380; *People v. Garcia* (2024) 101 Cal.App.5th 848, 855 (*Garcia*).) The CDCR is required to identify anyone serving a term for a judgment that includes such an enhancement. (§ 1172.75, subd. (b).) The sentencing court then must recall the sentence and fully resentence the defendant.

(§ 1172.75, subd. (c); *People v. Monroe* (2022) 85 Cal.App.5th 393, 399, 401–402 [full resentencing required].) The resentencing must result in a lesser sentence than the one originally imposed, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. (§ 1172.75, subd. (d)(1).) “The court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant’s risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice.” (§ 1172.75, subd. (d)(3).)

We review a superior court’s sentencing decisions—here, the reimposition of the same sentence minus the three one-year prison priors—for an abuse of discretion. (*Garcia, supra*, 101 Cal.App.5th at p. 851.) Under that standard, we ask whether substantial evidence supports the court’s findings of fact, whether its legal rulings are correct, and whether its application of the law to the facts was neither arbitrary nor capricious. (*Id.* at p. 857.)

We find no abuse of discretion here. The court reduced Cervantes’s sentence to 25 years to life to be followed by LWOP. So Cervantes’s new sentence *is* “a lesser sentence than the one originally imposed.” (§ 1172.75, subd. (d)(1).) Even if it were not, the court found imposing a lesser sentence for Cervantes would endanger public safety.

Because this appeal is from the denial of postconviction relief, and not from his conviction, Cervantes is not entitled to

our independent review of the record. (See *Delgadillo, supra*, 14 Cal.5th at p. 226; *People v. Kelly* (2006) 40 Cal.4th 106, 119 [independent judicial review mandated by *Anders v. California* (1967) 386 U.S. 738 applies only to first appeal as of right].) We are, however, required to address the contentions Cervantes raises in his supplemental letter. (*Delgadillo*, at p. 232.)

As noted, Cervantes complains his counsel misstated his sentence as 28 years to life plus LWOP. But his attorney in fact did correctly state the sentence the trial court originally imposed. As for Cervantes's contention that he completed classes, trainings, and the like while in prison, the record reflects the court properly exercised its discretion in resentencing him. Among other factors, the court noted Cervantes robbed and killed Fix some four years after he'd committed another robbery with a gun, and he had a number of rules violations in prison, from "getting into fights" and "being defiant with the guards" to possessing cell phones and "making alcohol." The court's consideration of these facts in combination with the circumstances of his commitment offense and criminal record was not arbitrary or capricious. (See *Garcia, supra*, 101 Cal.App.5th at p. 858.)

DISPOSITION

We affirm the judgment.

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EGERTON, J.

We concur:

EDMON, P. J.

ADAMS, J.