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

THE PEOPLE,

B339363

Plaintiff and Respondent,

(Los Angeles County
Super. Ct. No. PA074182)

v.

CHRISTOPHER ENRIQUEZ
CUADRO,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Daniel B. Feldstern, Judge. Affirmed, with instructions.

Stephen M. Vasil, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Scott A. Taryle and Sophia A. Lecky, Deputy Attorneys General for Plaintiff and Respondent.

In 2013, the trial court sentenced Christopher Enriquez Cuadro to an aggregate term of 21 years four months in state prison. In 2023, the superior court recalled Cuadro's sentence pursuant to Penal Code¹ section 1172.75 and resentenced him. The resentencing court dismissed two prior prison term enhancements, and sentenced Cuadro to 19 years four months in state prison.

On appeal, Cuadro contends: (1) the resentencing court erred in reimposing the upper term in count 1 (§ 245, subd. (c), assault with a deadly weapon upon a peace officer) based on aggravating factors not stipulated to or found true beyond a reasonable doubt in a court or jury trial; (2) the court abused its discretion in imposing the upper term in count 1 by relying on an aggravating circumstance that amounted to an element of the offense; and (3) the abstract of judgment incorrectly reflects the trial court's calculation of custody credits. The People agree that the abstract of judgment must be amended, but otherwise challenge Cuadro's contentions.

We affirm the court's resentencing order. We order that the abstract of judgment be amended to reflect the court's oral pronouncement of Cuadro's credits, which included an additional 4,147 days for the period Cuadro remained in custody between his 2013 original sentencing and his July 2024 resentencing, for a total of 4,587 credits.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

PROCEDURAL HISTORY²

A. *Trial and Sentencing*

Following a bench trial, the court found true the allegations that Cuadro had suffered a prior strike under the Three Strikes law (§§ 667 (b)–(j); 1170.12), had suffered one prior serious felony conviction (§ 667, subd. (a)(1)); and had served three prior prison terms (§ 667.5, subd. (b)). Because one of Cuadro’s prior convictions was for taking a vehicle (Veh. Code, § 10851, subd. (a)), the court’s true finding elevated the jury’s verdict in count 3 (Veh. Code, § 10851, subd. (a)) to petty theft with a prior conviction (§ 666.5).

The court sentenced Cuadro to a total of 21 years four months in prison. In count 1, the court imposed the upper term of five years, doubled to 10 years under the Three Strikes law. The court imposed consecutive sentences of 16 months in count 2 (one-third the middle term, doubled pursuant to the Three Strikes law) and two years in count 3 (one-third the middle term, doubled pursuant to the Three Strikes law). The court imposed a concurrent term of six months in count 4. Finally, the court imposed an additional five years for the prior serious felony conviction, and one year each for the three prior prison term enhancements. The court awarded Cuadro 440 total days of presentence custody credit.

Regarding imposition of the upper term in count 1, the trial court cited numerous aggravating factors, including that the crime involved a threat of great bodily harm, Cuadro engaged in

² Because the issues presented are purely legal we do not include a recitation of the facts.

violent conduct that indicated he posed a serious danger to society, Cuadro had suffered very serious prior convictions of that were of increasing seriousness, Cuadro had served a prior prison term, Cuadro was on parole when he committed the offense, and Cuadro had performed poorly on past probations. The court noted that there were no mitigating factors. Although counsel had argued Cuadro was high on drugs when he committed the offense, the court considered this to be an aggravating factor.

B. *Resentencing Pursuant to Section 1172.75*

In 2023, the superior court recalled Cuadro's sentence pursuant to section 1172.75 and appointed counsel to represent him. Counsel requested full resentencing and asked that two of the three prior prison term allegations (§ 667.5, subd. (b)) be dismissed. Section 1172.75 did not apply to Cuadro's third prior prison term enhancement for a rape conviction. The prosecution agreed that two of the three prison term allegations should be stricken, but opposed full resentencing.

The court held a full resentencing hearing. The court struck the two prior prison term enhancements (§ 667.5, subd. (b)) that the parties agreed should be stricken and imposed the one-year prior prison term previously imposed in connection with Cuadro's conviction for rape. The court then considered whether any enhancements that fell under section 1385, subdivision (c), should be dismissed in the furtherance of justice. The court stated that, due to recent changes in the law, it was required to give great weight to any factors listed in section 1385, subdivision (c)(2) that favored dismissal of enhancements, unless the court found dismissal would endanger public safety. The court found

that the only relevant section 1385, subdivision (c)(2) factor was that multiple enhancements had been charged.

Defense counsel argued that Cuadro was not a danger to society and requested that the court strike the remaining one-year prior prison term enhancement (§ 667.5, subd. (b)) and the five-year section 667, subdivision (a) enhancement, and impose the middle term in count 1, rather than the high term.

The prosecutor responded that dismissal of the enhancements and imposition of a lesser sentence (§ 1172.75, subd. (d)(1)) would endanger public safety. Pursuant to section 1172.75, subdivision (d)(3), the court should consider post-conviction factors, including Cuadro's disciplinary record and his record of rehabilitation while incarcerated. Pursuant to section 1172.75, subdivision (d)(4), the court could reimpose the high term without having the aggravating factors stipulated to by Cuadro or being found true by a jury. Cuadro's post-conviction history—use of a controlled substance (methamphetamine), fist fighting, participation in a riot, fermenting alcohol in his cell, and threatening to kick and stab another inmate—demonstrated that he posed a great risk to society if released. Cuadro had tested positive for narcotics multiple times in 2023, which was significant in light of the fact that he committed the offenses while high. In 2022, the parole board noted that Cuadro had a high propensity for violence that Cuadro had not worked sufficiently to correct. Cuadro committed the most recent offense while on parole for rape. He had an ongoing history of violence that was not remote in time.

Defense counsel replied that the parole board's hearing report also indicated Cuadro had participated in educational, vocational, and work assignments for a sustained period.

The resentencing court concluded that, particularly considering Cuadro's rules violations, which were considerable and recent, he continued to pose a risk of danger to society. The parole board had reviewed Cuadro extensively (including psychological examination) and found that as of August 11, 2023, Cuadro posed an unreasonable risk of violence or significant criminal activity to the community. The court was not bound by that finding, but found it instructive. The court declined to strike any of the remaining enhancements because doing so would endanger public safety as defined in the statute.

With respect to the high term, the court noted that section 1172.75, subdivision (d)(4) carved out an exception to the rule that aggravating factors must either be stipulated to by the defendant or found true by a jury in cases where the court previously imposed the high term. The court reimposed the high term in count 1, stating: “The high term was and is premised on a number of aggravating factors that include that he engaged in violent conduct that indicates a serious danger to society. That he was—he has served prior prison terms. He was on parole at the time of these offenses. His conduct on probation or parole has been poor. These support the high term as they did then as they do now. [¶][¶] But I am also, again, looking forward. So I am looking into the future, because I believe that the statute [section] 1172.75 calls upon me to do so in their language. So the disciplinary records are relevant in that analysis, as well as his efforts to rehabilitate himself.”

The court calculated Cuadro's credits as the original 440 days, plus the 4,147 days he spent in custody between March 6, 2013, and the day of sentencing, for a total of 4,587 days.

DISCUSSION

A. *Contentions Relating to Sentencing Pursuant to Section 1172.75*

1. Legal Principles

Section 1172.75, subdivision (a), provides that a section 667.5, subdivision (b) prior prison term enhancement imposed prior to January 1, 2020, is invalid, except for an enhancement imposed for a prior conviction for a sexually violent offense. Section 1172.75, subdivision (c), provides that if the court finds that the defendant's current judgment includes an invalid prior prison term enhancement, the court must recall the sentence and resentence the defendant.

"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." (§ 1172.75, subd. (d)(1).)

"The court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing." (§ 1172.75, subd. (d)(2).) "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." (*Id.*, subd. (d)(3).)

2. Analysis

a. *To Reimpose the High Term, the Resentencing Court was not Required to Rely on Aggravating Factors that were Either Stipulated to or Found True by a Jury.*

Until 2007, section 1170, subdivision (b) provided that "the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime." (See § 1170, former subd. (b); Stats. 1977, ch. 165, § 15 . . .) " (*People v. Mathis* (2025) 111 Cal.App.5th 359, 370, review granted Aug. 13, 2025, S291628 (*Mathis*).) "In 2007, however, the United States Supreme Court held that California's upper term sentencing scheme violated the Sixth Amendment right to a jury trial because it allowed a defendant's prison sentence to be increased beyond the statutory maximum based on facts that had not been found true beyond a reasonable doubt by a jury or admitted by the defendant. [Citations.]" (*Ibid.*, citing to *Cunningham v. California* (2007) 549 U.S. 270, 274–275 (*Cunningham*).)

In *Cunningham*, *supra*, 549 U.S. 270, the United States Supreme Court explained that the Sixth Amendment requires any fact that exposes a defendant to a potentially greater sentence, except for prior conviction allegations, must be found

true by a jury beyond a reasonable doubt. (*Mathis, supra*, 111 Cal.App.5th at p. 370.) “*Cunningham* noted that California could comply with the Sixth Amendment either by [(1)] requiring jury findings for any facts necessary to impose an aggravated sentence, or by [(2)] authorizing sentencing courts ‘‘to exercise broad discretion . . . within a statutory range.’’’ (*Id.* at pp. 370–371.) The California Legislature responded to *Cunningham* by amending section 1170, subdivision (b) to grant trial courts broad discretion to choose between the lower, middle, and upper terms—i.e., it adopted *Cunningham*’s second option. (*Mathis, supra*, 111 Cal.App.5th at p. 371.)

Effective January 1, 2022, the Legislature changed course and instead adopted *Cunningham*’s first option, amending section 1170, subdivisions (b)(1) and (2) in part to provide that when a “‘statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term,’” except that the court may impose a sentence exceeding the middle term when “‘there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.’ [Citations.]’’ (*Mathis, supra*, 111 Cal.App.5th at p. 371.) Section 1172.75, subdivision (d)(4) provides, “Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the

defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.”

Cuadro contends that section 1172.75, subdivision (d)(2)—which directs the resentencing court to “apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences”—requires the resentencing court to apply amended section 1170, subdivision (b)(2) when determining whether to deviate from the presumptive middle term upon resentencing. Cuadro argues that the resentencing court was prohibited from imposing the upper term because Cuadro did not stipulate to facts in aggravation and no aggravating facts were found true beyond a reasonable doubt in a trial by a judge or a jury.

Courts are split regarding whether the exception contained in section 1172.75, subdivision (d)(4) permits a trial court to reimpose an upper term sentence where the facts underlying an aggravating circumstance were neither stipulated to by the defendant nor found true by the trier of fact beyond a reasonable doubt. (Compare *People v. Brannon-Thompson* (2024) 104 Cal.App.5th 455, 466–467 (*Brannon-Thompson*) [a court may reimpose an upper term originally imposed] and *People v. Gonzalez* (2024) 107 Cal.App.5th 312, 330 (*Gonzalez*) [rejecting *Brannon-Thompson*’s construction of section 1172.75, subdivision (d)(4)].) Our Supreme Court has granted a petition for review on this issue. (*Mathis, supra*, 111 Cal.App.5th 373, fn. 6, citing *People v. Eaton* (Mar. 14, 2025, C096853) [nonpub. opn.], review granted May 14, 2025, S289903.)

In the absence of Supreme Court guidance, we agree with *Brannon-Thompson*’s analysis that giving section 1172.75, subdivision (d)(4) “its plain meaning, it is evident the Legislature

intended the new burden of proof amendments to section 1170, subdivision (b) apply only if the trial court is imposing the upper term *for the first time* at a section 1172.75 resentencing. Section 1172.75, subdivision (d)(4) is, therefore, an exception to the general rule that the trial court must apply ameliorative changes in the law at a section 1172.75 resentencing.” (*Brannon-Thompson, supra*, 104 Cal.App.5th at pp. 466–467, italics added.) Here, the court had previously imposed the high term. Accordingly, it did not err in resentencing Cuadro to the upper term.³

³ Contrary to Cuadro’s assertion, our Supreme Court’s recent opinion in *People v. Wiley* (2025) 17 Cal.5th 1069 (*Wiley*) did not concern whether a court must apply ameliorative changes in the law when re-imposing the high term. *Wiley* addressed section 1170, subdivision (b)(3), which provides that “the court may consider the defendant’s prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury.” *Wiley* held that the scope of section 1170, subdivision (b)(3) is limited, and specifically that “a jury [must] determine whether the particular details of a defendant’s criminal history establish an unsatisfactory probation performance or demonstrate convictions of increasing seriousness, before a trial court can rely on those facts to justify an upper term sentence.” (*Id.* at p. 1078.) *Wiley* does not impact a court’s ability to reimpose the high term pursuant to section 1172.75, subdivision (d)(4).

b. *The Resentencing Court Did Not Rely on an Aggravating Factor that is an Element of the Offense to Impose the High Term.*

Alternatively, Cuadro argues that the resentencing court abused its discretion by imposing the upper term based on the fact that the crime involved a threat of great bodily harm—an aggravating factor that is an element of the crime of assault with a deadly weapon upon a peace officer.⁴

We reject the contention. The trial court did not rely on that factor in resentencing Cuadro. Cuadro's argument assumes, without support in the record, that the court relied on every aggravating factor that it relied on at the original sentencing hearing.⁵ It did not. The court specifically discussed the aggravating factors supporting imposition of the high term at resentencing and did not include the threat of great bodily harm as an aggravating factor in support of the high term.

B. *Errors in the Abstract of Judgment*

⁴ Cuadro concedes that counsel did not raise this objection at resentencing; he instead claims that counsel provided ineffective assistance. The People state that they do not assert forfeiture and therefore do not address the ineffective assistance claim.

⁵ The opening brief repeatedly cites the trial court's discussion of the threat of great bodily injury at the *original sentencing hearing* when discussing *resentencing*. The statute does not require a resentencing court to rely on all of the aggravating factors that the sentencing court originally relied upon to impose the high term when it decides to reimpose that term, and Cuadro makes no argument to the contrary.

We agree with the parties that the abstract of judgment erroneously reflects that Cuadro is entitled to 440 days of credit. It must be corrected to reflect an additional 4,147 days for the period Cuadro remained in custody between his 2013 original sentencing and his July 2024 resentencing, for a total of 4,587 credits.

DISPOSITION

We affirm the court's resentencing order. The clerk of the superior court is directed to correct the abstract of judgment to reflect the court's oral pronouncement of Cuadro's credits, which included an additional 4,147 days for the period he remained in custody between his 2013 original sentencing and his July 2024 resentencing, for a total of 4,587 credits. The clerk of the superior court is further directed to prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

MOOR, J.

WE CONCUR:

HOFFSTADT, P. J.

KIM (D.), J.