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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDALL RYAN BEASLEY,

Defendant and Appellant.

F088967

(Super. Ct. No. BF151133A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Kimberley A. Donohue, Assistant Attorney General, Amanda D. Cary and Ian Whitney, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P. J., Meehan, J. and Snauffer, J.

INTRODUCTION

Defendant Randall Ryan Beasley (defendant) contends on this appeal, that his restitution fine under Penal Code section 1202.4, subdivision (b)¹ should be vacated. The People agree that because it has been more than 10 years since the original imposition of the fine, any remaining balance should be vacated under section 1465.9, subdivision (d).

We agree and modify the judgment to vacate any remaining balance on defendant's restitution fine under section 1202.4, subdivision (b). In all other respects, we affirm the judgment.

BACKGROUND²

On November 5, 2013, defendant, along with two codefendants, were jointly charged with burglary of a liquor store (§ 460, subd. (b); count 5), criminal threats (§ 422; count 6), and robbery (§ 212.5, subd. (c); count 7). Defendant and one codefendant were jointly charged with a separate incident of burglary of a liquor store (§ 460, subd. (b); count 3) and robbery (§ 212.5, subd. (c); count 4). It was further alleged that defendant was previously convicted of a "strike" offense (§§ 667, subds. (c)–(j), 1170.12, subds. (a)–(e)) and served two prior prison terms (§ 667.5, subd. (b)). On counts 4, 6, and 7, it was alleged defendant was previously convicted of a serious felony (§ 667, subd. (a)(1)); and on counts 5 through 7, it was alleged defendant personally used a firearm in the commission of the offenses (§§ 12022.5, subd. (a), 12022.53, subd. (b)).

Before trial, at the prosecution's request, the trial court dismissed the section 12022.53, subdivision (b) firearm enhancement allegations on counts 5 and 6. The jury found defendant guilty on each of the substantive offenses. At the prosecution's request, the court dismissed the firearm allegations (§§ 12022.5, subd. (a) for counts 5, 6

¹ Hereinafter, all undesignated statutory references are to the Penal Code.

² The facts underlying defendant's conviction are not relevant to the issue raised on appeal and therefore, intentionally omitted.

& 7; 12022.53, subd. (b) for count 7). In a bifurcated proceeding, the court found true the recidivist enhancement allegations (§§ 667, subd. (a), 667.5, subd. (b)).

On April 1, 2014, defendant received an aggregate sentence of 20 years four months as follows: 17 years on count 4, two years on count 7 and one year four months on count 6. The trial court imposed and stayed the upper term of six months on counts 3 and 5. It also imposed a \$280 restitution fine under section 1202.4, subdivision (b), and imposed a \$280 fine under section 1202.45, which was suspended subject to parole revocation.

On May 14, 2024, defendant filed a request for resentencing under sections 1385 and 1172.75, arguing that the trial court should dismiss his five-year enhancement (§ 667, subd. (a)), as well as his two prison priors (§ 667.5, subd. (b).) On July 17, 2024, defendant filed a second request for resentencing on the same grounds. On November 1, 2024, the court struck defendant's two prison priors and reduced his sentence on count 4 to six years, for a total of 14 years, four months. The court declined to reduce defendant's sentence further by striking the serious prior enhancement. On November 18, 2024, defendant filed a notice of appeal. The only issue appellate counsel raises on appeal is that his restitution fine under section 1202.4 should be vacated and the balance dismissed.

DISCUSSION

Effective January 1, 2025, Assembly Bill No. 1186 (2023–2024 Reg. Sess.) (Stats. 2024, ch. 805, § 1) amended section 1465.9 by adding subdivision (d), which provides: “Upon the expiration of 10 years after the date of imposition of a restitution fine pursuant to Section 1202.4, the balance, including any collection fees, shall be unenforceable and uncollectible and any portion of a judgment imposing those fines shall be vacated.” When defendant was resentenced, his restitution fine was not challenged. However, because the amendment to section 1465.9 operates to lessen the amount of restitution payable, it operates to reduce punishment and applies retroactively to all nonfinal cases.

(See *In re Estrada* (1965) 63 Cal.2d 740, 745; *People v. Hanson* (2000) 23 Cal.4th 355, 362 [restitution fines qualify as punishment].) Here, defendant's appeal from the trial court's resentencing order causes his judgment to remain nonfinal. Therefore, he is entitled to any applicable ameliorative benefits under section 1465.9.

The People do not dispute that defendant is entitled to have his restitution fine vacated pursuant to section 1465.9, subdivision (d). The 10-year requirement under section 1465.9, subdivision (d) is determined by "the date of imposition of a restitution fine." Defendant's \$280 restitution fine under section 1202.4, subdivision (b) was imposed when he was originally sentenced on April 1, 2014. Therefore, since it has been more than 10 years since defendant's fine was imposed, the remaining balance of the \$280 restitution fine, along with any outstanding collection fees, is uncollectible and unenforceable pursuant to section 1465.9, subdivision (d). Accordingly, we must modify the judgment to vacate the portion of defendant's judgment ordering the \$280 restitution fine under section 1202.4, subdivision (b).

DISPOSITION

We modify the judgment to reflect that the \$280 restitution fine imposed pursuant to section 1202.4, subdivision (b), is vacated pursuant to section 1465.9, subdivision (d). The trial court shall prepare an amended abstract of judgment reflecting that the restitution fine has been vacated. The court shall then forward the amended abstract of judgment to the appropriate entities. In all other respects, the judgment is affirmed.