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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

GALE JENKINS,

Defendant and Appellant.

B341323

(Los Angeles County
Super. Ct. No. SA029818)

APPEAL from an order of the Superior Court of Los Angeles County, Christopher W. Dybwad, Judge. Reversed and remanded with directions.

Monique Hemli-Munoz, 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, Assistant Attorney General, Scott A. Taryle and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Gale Jenkins appeals from an order finding her ineligible for resentencing under Penal Code section 1172.75.¹ We reverse with instructions that the trial court conduct further proceedings under that section.

We resolve this appeal by memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1.

In 1998, in a bench trial, the trial court convicted Jenkins of first degree robbery (§§ 211, 212.5, subd. (a)). The court sentenced her to 25 years to life in state prison pursuant to the “Three Strikes” law. The court imposed and stayed a section 667.5, subdivision (b) enhancement based on Jenkins having served a prior prison term.

In 2020, the Legislature enacted section 1172.75, which limits the circumstances when section 667.5, subdivision (b) sentencing enhancements may be imposed. (*People v. Renteria* (2023) 96 Cal.App.5th 1276, 1282.) Someone serving a sentence that includes an enhancement that section 1172.75 now renders invalid is eligible for possible resentencing. (See § 1172.75, subs. (c)-(d).)

In 2024, Jenkins filed a motion for resentencing under section 1172.75 and argued that in addition to striking her now-invalid enhancement, the trial court should exercise its discretion under *People v. Superior Court (Romero)* 13 Cal.4th 497 to strike one of her prior strike offenses. In an October 8, 2024 order, the court concluded that Jenkins was ineligible for resentencing for two reasons: (1) the enhancement had been stayed and not executed; and (2) if section 1172.75 were applied to resentence Jenkins, section 1172.75 would conflict with the resentencing provisions added to the Three Strikes law by the Three Strikes

¹ All further statutory references are to the Penal Code.

Reform Act of 2012 (Reform Act). Jenkins filed a timely notice of appeal.

The parties agree, as do we, that the stay of the enhancement does not render Jenkins ineligible for section 1172.75 resentencing. At the time of the appealed-from order, appellate courts were split over the question of whether section 1172.75, subdivision (a) applied to a stayed prior prison term enhancement. (See, e.g., *People v. Bravo* (2025) 107 Cal.App.5th 1144, 1155 [collecting cases].) The California Supreme Court's recent decision in *People v. Rhodius* (2025) 17 Cal.5th 1050 (*Rhodius*) resolved this split of authority, holding that "section 1172.75 entitles a defendant to resentencing if the underlying judgment includes a prior-prison-term enhancement that was imposed before January 1, 2020, regardless of whether the enhancement was then executed or instead stayed." (*Id.* at p. 1054.) Accordingly, the stay does not render Jenkins ineligible for resentencing.

The parties further agree, as do we, that resentencing Jenkins under section 1172.75 would not conflict with the Reform Act. The Reform Act "changed the sentence prescribed for a third strike defendant whose current offense is *not* a serious or violent felony" and established a resentencing procedure, codified at section 1170.126, only for such defendants. (*People v. Conley* (2016) 63 Cal.4th 646, 652-653, italics added.) Jenkins's current offense, robbery, is a serious and violent felony. (§§ 667.5, subd. (c)(9)), 1192.7, subd. (c)(19).) She is therefore ineligible for resentencing under the Reform Act. (See *Conley*, at pp. 652-653.) Instead of seeking relief under the Reform Act, she seeks relief under *Romero*.

In an analogous case (decided after the trial court made the appealed-from order in this case), the appellate court held that resentencing a third strike defendant whose current offenses were robbery and false imprisonment under section 1172.75 would not unconstitutionally amend section 1170.126, because the defendant had always been ineligible for relief under the Reform Act and did not seek such relief, instead seeking relief under *Romero*. (*People v. Rogers* (2025) 108 Cal.App.5th 340, 347, 363-364 (*Rogers*).) Here, similarly, because Jenkins does not seek and could never have obtained resentencing under the Reform Act, resentencing her under section 1172.75 would not conflict with the Act. Thus, the trial court erred by concluding that Jenkins was ineligible for resentencing under section 1172.75.²

² In opposition to Jenkins’s motion for resentencing, the district attorney relied on cases holding that in resentencing proceedings under section 1172.25, granting relief under the Reform Act’s revised penalty provisions—a type of relief that Jenkins did not request—would unconstitutionally amend section 1170.126. (See, e.g., *People v. Superior Court (Williams)* (2024) 102 Cal.App.5th 1242, 1259-1260, review granted August 28, 2024, S286128 [collecting cases].) Our Supreme Court recently abrogated those cases by holding that the Reform Act’s revised penalty provisions may be applied at a section 1172.25 resentencing if section 1170.126’s substantive requirements are satisfied. (*People v. Superior Court (Guevara)* (2025) 18 Cal.5th 838, 850, 861.) In any event, this line of authority is immaterial to Jenkins’s request for resentencing because, as noted, she does not seek and cannot obtain relief under the Reform Act. (See *Rogers*, *supra*, 108 Cal.App.5th at p. 363 [distinguishing *Williams* and related cases on this ground]; *Guevara*, at p. 854, fn. 5 [noting that the Supreme Court did not consider the issue addressed in the cited portion of *Rogers*].)

DISPOSITION

The order is reversed. Following remand, the court shall conduct further proceedings consistent with section 1172.75, *Rhodus, supra*, 17 Cal.5th 1050, and this opinion.

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M. KIM, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.