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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.

EDWARD JAMES DEWEY,

Defendant and Appellant.

B338332

(Los Angeles County
Super. Ct. No. BA388628)

APPEAL from a judgment of the Superior Court of Los Angeles County, Serena R. Murillo, Judge. Reversed and remanded.

William G. Holzer, 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, Noah P. Hill and Heidi Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Edward James Dewey appeals from the judgment after he was resentenced pursuant to Penal Code¹ section 1172.75. The Attorney General concedes we should reverse and remand under the Supreme Court’s recent decision in *People v. Fletcher* (2025) 18 Cal.5th 576 (*Fletcher*). We agree and reverse by memorandum opinion.

In 2012, defendant pleaded no contest to, and was convicted of, voluntary manslaughter and assault by means likely to cause great bodily injury. In his plea, he admitted to a prior conviction for possession of a firearm by a felon with a gang enhancement under section 186.22, subdivision (b)(1)(A), and a prior conviction for grand theft.

The trial court sentenced defendant to 39 years in state prison. This consisted of the upper term of 11 years on the voluntary manslaughter count, doubled to 22 years under the “Three Strikes” law, a 10-year firearm enhancement, a five-year prior conviction enhancement under section 667, subdivision (a)(1), a one-year prior conviction enhancement under section 667.5, subdivision (b), and a one-year sentence on the assault count.

On October 19, 2023, defendant filed a motion for resentencing under section 1172.75, seeking to dismiss his prior conviction enhancement under section 667.5, subdivision (b). Defendant further sought dismissal or retrial of his strike prior — firearm possession with gang enhancement — in light of Assembly Bill No. 333 (2021–2022 Reg. Sess.), which amended the elements necessary to prove the gang enhancement under section 186.22.

¹ Unspecified statutory citations are to the Penal Code.

At a March 12, 2024 hearing, the trial court ruled, “[Assembly Bill No.] 333 does not compromise the integrity of a strike prior that relied on a [section] 186.22 enhancement,” “so I don’t think that I would apply the [Assembly Bill No.] 333 newer definition of a [section] 186.22 [enhancement] to the prior in [defendant’s] case at this time.”

The court addressed the remaining resentencing issues at a hearing on May 22, 2024, at which it recalled and resentenced defendant pursuant to section 1172.75. The court struck the prior conviction enhancements under sections 667, subdivision (a)(1) and 667.5, subdivision (b), and left the other aspects of the sentence in place, including the strike prior. This reduced defendant’s sentence to 33 years.

Defendant timely appealed. He argues the trial court should have applied Assembly Bill No. 333’s amendments to section 186.22 when determining whether his prior conviction constitutes a strike.

Assembly Bill No. 333 “changed the elements of gang offenses and enhancements [in section 186.22] by narrowing the definitions of ‘criminal street gang,’ ‘pattern of criminal activity,’ and ‘what it means for an offense to have commonly benefitted a street gang.’ [Citations.]” (*Fletcher, supra*, 18 Cal.5th at p. 583.) These amendments are “ameliorative legislation that appl[y] to nonfinal judgments under the rule of *In re Estrada* (1965) 63 Cal.2d 740.” (*Fletcher*, at p. 583.)

Recall and resentencing of a defendant pursuant to statute, in this case section 1172.75, “‘effectively vacate[s] the earlier judgment,’” rendering it “‘no longer final.’” (*People v. Salgado* (2022) 82 Cal.App.5th 376, 380; *ibid.* [discussing resentencing under former § 1170, subd. (d)]; see *People v. Lopez* (2025)

17 Cal.5th 388, 398 [“A defendant whose sentence is vacated ‘ “regain[s] the right to appeal whatever new sentence was imposed,” ’ and the judgment becomes nonfinal.”].) Defendant’s judgment therefore no longer is final, and he is entitled to the benefit of Assembly Bill No. 333’s amendments to section 186.22.

Defendant’s prior conviction for firearm possession constituted a strike because of the gang enhancement under section 186.22. (See § 1192.7, subd. (c)(28) [listing as a “serious felony” “any felony offense, which would also constitute a felony violation of Section 186.22”].) The trial court concluded that Assembly Bill No. 333, although retroactive to nonfinal judgments, did not affect the prior conviction’s status as a strike.

The Supreme Court concluded otherwise in *Fletcher*, issued after the trial court’s ruling in the instant case. In *Fletcher*, the defendants received Three Strikes sentences based on prior convictions for firearm possession with gang enhancements. (*Fletcher, supra*, 18 Cal.5th at p. 584.) Assembly Bill No. 333 went into effect while the defendants’ appeals were pending. (*Id.* at p. 585.) The defendants argued the bill “required reversal of the trial court’s true findings that their [prior] convictions for unlawful firearm possession constituted a serious felony and a strike prior.” (*Ibid.*)

The Supreme Court agreed, holding, “[W]here a defendant has suffered a conviction under the prior version of section 186.22, Assembly Bill [No.] 333 applies to the determination of whether the conviction qualifies as a prior serious felony conviction under subdivision (c)(28) of section 1192.7 for purposes of the Three Strikes law and prior serious felony enhancements.” (*Fletcher, supra*, 18 Cal.5th at p. 583.) In that case, there was “no indication that [the defendants’ prior] conviction was obtained

under Assembly Bill [No.] 333's more stringent requirements, and the abstracts of judgment for their [prior] convictions do not alone prove the elements of the alleged prior serious felony and strike prior enhancements beyond a reasonable doubt. The appropriate remedy is reversal of the findings on these enhancements for retrial under the correct law." (*Fletcher*, at p. 607.)

Fletcher was not a resentencing case, but a direct appeal from a conviction. (See *Fletcher*, *supra*, 18 Cal.5th at p. 585.) It nonetheless establishes that Assembly Bill No. 333 applies to nonfinal cases in determining whether a prior conviction with an enhancement under section 186.22 is a strike under section 1192.7, subdivision (c)(28). We therefore reverse and remand to the trial court for a resentencing hearing applying the principles set forth in *Fletcher*.

DISPOSITION

The judgment is reversed and the matter remanded for further proceedings consistent with this opinion.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.