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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO PACHEANO,

Defendant and Appellant.

B340327

(Los Angeles County  
Super. Ct. No. TA121251)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Patrick Connolly, Judge. Vacated and Remanded.

Jennifer Peabody, 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,  
Roberta L. Davis and Nima Razfar, Deputy Attorneys General, for Plaintiff  
and Respondent.

## INTRODUCTION

Defendant Richardo Pacheano contends this case must be remanded because the trial court did not comply with Penal Code section 1172.75<sup>1</sup> when it struck his prior prison term enhancement. The Attorney General agrees, as do we. We vacate Pacheano's sentence and remand for a full resentencing hearing consistent with section 1172.75, at which Pacheano has a right to be present, represented by appointed counsel, and present evidence and argument in support of any request for further sentencing relief.

## PROCEDURAL HISTORY<sup>2</sup>

In 2014, a jury convicted Pacheano of aggravated sexual assault of a child (§ 269, subd. (a)(4)), lewd act upon a child (§ 288, subd. (a)), continuous sexual abuse (§ 288.5, subd. (a)), and oral copulation and sexual penetration of a child under 10 (§ 288.7, subd. (b)). In a bifurcated proceeding, the trial court found true that Pacheano suffered a prior prison term enhancement (§ 667.5, subd. (b)). The court sentenced Pacheano to a total term of 25 years plus 30 years to life in state prison, which included one year for the prior prison term enhancement.

On December 20, 2022, Pacheano was identified as an inmate eligible for resentencing pursuant to section 1172.75. The next day, the trial court took judicial action of the matter and struck Pacheano's prior prison term enhancement. No party was present, including counsel for Pacheano. The court imposed the remainder of the original sentence without conducting a

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup> We omit a summary of the facts underlying Pacheano's convictions as they are irrelevant to the issues on appeal.

full resentencing hearing, which resulted in a total term of 24 years plus 30 years to life in state prison.

On October 2, 2024, this court granted Pacheano relief for failure to file a timely notice of appeal. Appointed counsel subsequently filed a notice of appeal.

## DISCUSSION

We agree with the parties that Pacheano’s sentence must be vacated and the matter remanded for a full resentencing hearing consistent with section 1172.75.

Prior to January 1, 2020, section 667.5, subdivision (b) required a court to impose a one-year sentence enhancement for each separate prior prison term served for a nonviolent felony, unless the defendant remained free from custody for at least five years. (See Stats. 1987, ch. 611, § 1 [§ 667.5, former subd. (b)].) Effective January 1, 2022, the Legislature retroactively invalidated prior prison term enhancements imposed under section 667.5, subdivision (b) prior to January 1, 2020, unless the term was served for certain sexually violent offenses. (Sen. Bill No. 483 (2021–2022 Reg. Sess.) (Senate Bill 483) (Stats. 2021, ch. 728, §§ 1, 3).) The Legislature also created procedures, in what is now section 1172.75, for sentencing courts to recall and resentence defendants who were serving prison terms on judgments that included the now invalid enhancement. (Stats. 2021, ch. 728, § 3.)

Under section 1172.75, if a trial court determines a defendant is serving a sentence that includes a now invalid prior prison term enhancement, the court must “recall the sentence and resentence the defendant.” (§ 1172.75, subd. (c).) At the resentencing hearing, the court must eliminate the repealed prior prison term enhancement. (*Id.*, subd.

(d)(1).) But that is not the only thing the court is required to do. Section 1172.75 “provides specific instructions for the resentencing.” (*People v. Carter* (2023) 97 Cal.App.5th 960, 966.) The court shall appoint counsel for the defendant (§ 1172.75, subd. (d)(5)) and apply any “changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing” (*id.*, subd. (d)(2)). Section 1172.75 also permits courts to consider postconviction factors in the resentencing inquiry, including “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).)

Here, Pacheano was eligible for relief under section 1172.75 as his prior conviction used for the prior prison term enhancement was not for a sexually violent offense. (§ 1172.75, subd. (a).) On December 21, 2022, the trial court struck Pacheano’s one-year prior prison term enhancement. The court, however, was required to conduct a full resentencing hearing, where Pacheano had an opportunity to be present and represented by appointed counsel. (*People v. Velasco* (2023) 97 Cal.App.5th 663, 668, 673–674 [remanding for new hearing under § 1172.75 because defendant was not present at hearing and did not waive his presence]; *People v. Cutting* (2019) 42 Cal.App.5th 344, 346 [defendant’s absence from resentencing hearing constitutes federal constitutional error].) “By its plain terms, section 1172.75 requires a full resentencing, not merely that the trial court strike the newly ‘invalid’ enhancements.” (*People v. Monroe* (2022) 85 Cal.App.5th 393, 402; *People v. Carter, supra*, 97 Cal.App.5th at pp. 968, 972 [defendant eligible for relief under § 1172.75 is entitled to full resentencing hearing to argue for further relief under other ameliorative changes]; *People v. Coddington* (2023) 96 Cal.App.5th 562, 568 [same].)

We vacate Pacheano's sentence and remand the matter for a full resentencing hearing consistent with section 1172.75. Prior to the resentencing hearing, the court shall appoint counsel to represent Pacheano. (*Id.*, subd. (d)(5).) Pacheano is entitled to be present at the resentencing hearing. (§ 977, subd. (b)(1).) Upon resentencing Pacheano, the court shall recalculate his custody credits. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 23, 40–41 [upon remand, trial court responsible for calculating all days defendant spent in custody prior to resentencing and presentence conduct credits prior to original sentencing].) In light of our conclusion, we need not address Pacheano's argument that the failure to give him notice of the resentencing hearing violated his constitutional rights.

### **DISPOSITION**

The sentence is vacated and the matter remanded to the superior court to conduct a full resentencing in accordance with section 1172.75. Upon the conclusion of the resentencing hearing, the superior court is directed to prepare and file an amended abstract of judgment and to forward a certified copy of the document to the California Department of Corrections and Rehabilitation.

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ZUKIN, P. J.

WE CONCUR:

COLLINS, J.

MORI, J.