Filed 12/30/25 P. v. Iniguez CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. SERGIO INIGUEZ, Defendant and Appellant.	B336506 (Los Angeles County Super. Ct. No. MA041780)

Appeal from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed with directions.

James M. Crawford, 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, Steven D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

We decide this appeal by memorandum opinion. (See Cal. Stds. Jud. Admin., § 8.1.)

Appellant Sergio Iniguez contends the trial court improperly reimposed certain upper term sentences at his Penal Code[1] section 1172.75 resentencing hearing. He further contends the court miscalculated his custody credits. We reject Iniguez's challenge to the reimposition of the upper term sentences, but agree the court failed to award the proper number of custody credits. Accordingly, we affirm with directions that the court correct the custody credits calculation.

In 2008, the district attorney charged Iniguez with one count of murder (§ 187, subd. (a)) and three counts of possession of a firearm by a felon (former § 12021, subd. (a)(1)). Iniguez pleaded guilty to the firearm possession charges and proceeded to trial on the murder charge. The jury convicted Iniguez of first degree murder.

At Iniguez's May 2009 sentencing, the trial court imposed an aggregate term of 82 years to life in prison and a $10,000 restitution fine. As relevant here, the sentence included three-year, upper terms on each of the firearm possession counts. The court doubled each term to six years pursuant to the "Three Strikes" law (§§ 667, subds. (b)-(j), 1170.12, subds. (a)-(d)) and ordered the terms to run concurrent to the sentence imposed on the murder count. In addition, the court imposed two consecutive one-year "prison prior" enhancements under section 667.5, subdivision (b).

Ten years later, the Legislature enacted Senate Bill No. 136 (2019–2020 Reg. Sess.), which amended section 667.5, subdivision (b) to eliminate sentence enhancements for prior prison terms unless the prior terms were for sexually violent offenses.

---

[1] Subsequent statutory references are to the Penal Code.

(Stats. 2019, ch. 590, § 1.) Then, via Senate Bill No. 483 (2021-2022 Reg. Sess.), the Legislature enacted section 1172.75 to provide a resentencing procedure that extends the prohibition on prior prison term enhancements to all persons currently incarcerated in jail or prison. (Stats. 2021, ch. 728, § 3.) Section 1172.75 requires the court to resentence any defendant serving a term on a judgment that includes a qualifying enhancement. (§ 1172.75, subd. (c).)

In February 2024, the trial court resentenced Iniguez pursuant to section 1172.75. The court struck the two invalidated section 667.5, subdivision (b) enhancements and halved Iniguez's restitution fine. But the court reimposed the upper term sentences originally imposed on each of the firearm possession counts.

On appeal, Iniguez challenges the court's reimposition of these upper terms.[2] He observes that section 1172.75 requires a resentencing court to apply any "changes in law that reduce sentences." (§ 1172.75, subd. (d)(2).) And he contends the court here ignored recent changes to section 1170, subdivision (b) that prohibit the imposition of an upper term unless the defendant stipulates to the aggravating circumstances supporting that term, or the prosecution proves the circumstances to a trier of fact beyond a reasonable doubt. (§ 1170, subd. (b)(2).)

Iniguez's challenge fails because subdivision (d)(4) of section 1172.75 provides that a court must comply with these

---

[2] Although not entirely clear, Iniguez also appears to suggest the court was unaware of its sentencing discretion and committed other, unspecified sentencing errors. Iniguez has forfeited these arguments by failing to support them with cogent argument and pertinent authority. (See *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286–287 ["[i]n order to demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record"].)

heightened factfinding requirements for aggravating factors before imposing an upper term, "[*u*]*nless the court originally imposed the upper term*." (§ 1172.75, subd. (d)(4), italics added.) In *People v. Brannon-Thompson* (2024) 104 Cal.App.5th 455 (*Brannon-Thompson*), the Third District held that subdivision (d)(4) thus "carves out an exception to the general rule that all ameliorative changes to the law must be applied at a section 1172.75 resentencing." (*Brannon-Thompson*, *supra*, at p. 458.) "Most courts" have followed *Brannon-Thompson*, holding "that, under section 1172.75, the [trial] court can reimpose an upper term sentence, even if at resentencing a jury or judge has not found the facts underlying the aggravating circumstances true beyond a reasonable doubt, so long as the trial court that originally sentenced the defendant imposed an upper term." (*People v. Dozier* (2025) 116 Cal.App.5th 700, 705.) We agree with those courts.[3]

Here, the court reimposed upper terms first imposed at Iniguez's original sentencing. Thus, pursuant to subdivision (d)(4) of section 1172.75, the court had no obligation to apply the heightened factfinding requirements in the recently amended version of section 1170, subdivision (b). Iniguez's challenge to these upper terms therefore fails.

We, however, agree with the parties that the amended abstract of judgment contains an error in the calculation of Iniguez's custody credits. At resentencing, the court neglected to add the 410 days of custody credits Iniguez received at his original

---

[3] In *People v. Gonzalez* (2024) 107 Cal.App.5th 312, the Sixth District reached the opposite conclusion. Our Supreme Court recently granted a petition for review that presents the question over which *Brannon-Thompson* and *Gonzalez* split. (See *People v. Eaton* (Mar. 14, 2024, C096853) [nonpub. opn.], review granted May 14, 2025, S289903.)

sentencing to the 5,395 days of custody credits the court correctly awarded for the period running from Iniguez's original sentencing to the date of his resentencing. (See *People v. Bravo* (1990) 219 Cal.App.3d 729, 735 ["a sentencing court must award credits for all days in custody up to and including the day of sentencing"].) Iniguez's appellate counsel contends he raised the error with the trial court during the pendency of this appeal, the court "agreed the abstract needed correction," and the court issued a further amended abstract of judgment to correct the error. We granted Iniguez's request to modify the appellate record to include a copy of that further amended abstract, but it contains the same miscalculation of Iniguez's custody credits.

Accordingly, we direct the court on remand to prepare an amended abstract of judgment that corrects this error and awards Iniguez 5,805 days of custody credits. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185 [the appellate court may direct the trial court to correct clerical errors in an abstract of judgment].) In all other respects, we affirm the judgment.

DISPOSITION

The trial court is directed to prepare an amended abstract of judgment in which it awards Iniguez 5,805 days of custody credits. The court shall forward the amended abstract of judgment to the California Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

M. KIM, J.