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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK DEWAYNE CHURCHILL,

Defendant and Appellant.

A172157

(Alameda County
Super. Ct. No. 22-CR-002291)

Defendant Frank Dewayne Churchill previously filed a petition for writ of habeas corpus in this court. The petition alleged that his seven-year sentence following his plea of no contest violated his constitutional right to equal protection because the district attorney failed to apply her special directive in his case, which would have resulted in a lower sentence.¹ We issued an order to show cause why the relief requested should not be granted. Shortly thereafter, the district attorney approved Churchill's seven-year plea agreement pursuant to an exception in the special directive. The trial court then granted the petition, vacated Churchill's original sentence, and, with the approval of the district attorney under her special directive, resentenced him

¹ We grant the parties' joint request to take judicial notice of the record and docket in Churchill's prior habeas proceeding, *In re Frank D. Churchill* (order to show cause issued May 8, 2024, A169600), including the trial court's August 9, 2024 order granting Churchill's petition.

to seven years in state prison.

Churchill appeals this new sentence, arguing that it still violates his right to equal protection and that his sentence should be modified to a lower term. We disagree and affirm.

I. BACKGROUND

In February 2022, a complaint was filed, charging Churchill with: (1) attempted murder (Pen. Code,² §§ 187, subd. (a), 664; count 1); (2) willful infliction of corporeal injury upon a former dating partner (domestic violence) (§ 273.5, subd. (a); count 2); (3) assault with a deadly weapon; a car (§ 245, subd. (a)(1); count 3); and (4) battery with serious bodily injury (§ 243, subd. (d); count 4). Counts 2 and 3 included a special allegation that Churchill personally inflicted great bodily injury. (§ 12022.7, subd. (e).) The complaint also alleged the aggravating circumstances of great violence and violent conduct with respect to all counts. In February 2023, pursuant to a negotiated plea agreement, Churchill pled no contest to domestic violence (count 2) and admitted the great bodily injury allegation and the aggravating circumstance of great violence. The remaining counts and allegations were dismissed.

After Churchill entered his plea but before his sentencing, the district attorney issued a special directive which, among other things, “prohibited [her] prosecutors from requiring defendants to plead to sentence enhancements or other sentencing allegations” and required prosecutors “to seek the low term of a sentencing triad.” The directive applied to all “pending” cases. Exceptions were permitted on a case-by-case basis with supervisory approval where “the physical injury personally inflicted on the

² All further statutory references are to the Penal Code unless otherwise specified.

victim is extensive’ ” or where “extraordinary circumstances” justified deviation from the low term.³ After several continuances of sentencing, the prosecutor informed the trial court that he had followed up but had not heard back from the district attorney as to whether the special directive applied here. The court denied Churchill’s request for a further continuance. In accordance with his plea, the court sentenced Churchill to seven years in state prison, comprised of an aggravated term of four years on count 2 and three years for the great bodily injury allegation.

In January 2024, Churchill filed a petition for writ of habeas corpus in this court, alleging that his sentence violated equal protection because the district attorney failed to apply her special directive in his case. We concluded that Churchill articulated a prima facie case for relief and issued an order to show cause. Approximately a week after we issued the order, the district attorney approved Churchill’s plea agreement. The prosecutor filed a return which included this approval and explained that before Churchill’s original sentencing, “approval of [his] plea deal was sought and obtained at all required levels except that of [the] [d]istrict [a]ttorney.”⁴ The prosecutor argued that Churchill’s petition should be deemed moot, given that his plea was now in compliance with the special directive. Churchill filed a traverse that did not dispute any of the facts in the return but requested an evidentiary hearing to “ ‘address whether approvals for certain courses of action were secured in a timely fashion.’ ”

As no material facts were in dispute regarding the district attorney’s

³ Churchill conceded that his case “ ‘could fall within one of the exceptions to the policy, given the injuries sustained by [the victim].’ ”

⁴ We agree with the trial court that there is no reason to believe that this failure was intentional or “attributable to anything other than ordinary administrative delay.”

approval, the trial court denied Churchill's request for an evidentiary hearing. It concluded that the district attorney's "belated final approval does not suffice to cure the procedural defect here," as the special directive required supervisory approval *before* sentencing. Accordingly, the court granted Churchill's petition and recalled and vacated his sentence. With the supervisory approval required by the special directive now obtained, the court resentenced Churchill to seven years in state prison pursuant to his plea agreement. Churchill timely appealed.

II. DISCUSSION

Churchill contends that his sentence still violates his rights to equal protection because the trial court was obligated to reduce his sentence to two years (the low term on count 2) to cure the error. Not so. "[O]nce a court [on habeas review] has determined that a defendant is entitled to resentencing, the result is vacatur of the original sentence, whereupon the trial court may impose any appropriate sentence." (*People v. Padilla* (2022) 13 Cal.5th 152, 163.) The judgment is nonfinal at this point because "the trial court regain[s] the jurisdiction and duty to consider what punishment [is] appropriate," and the defendant "regain[s] the right to appeal whatever *new* sentence [is] imposed." (*Id.* at pp. 161–162, italics added.)

Here, it is undisputed that the special directive applied to Churchill, as it went into effect while his case was still pending. But as Churchill himself concedes, the special directive allowed for exceptions, provided that supervisory approval was obtained where, as here, a plea agreement includes a sentence enhancement or deviates from the low term. The prosecutor attempted to but was unable to obtain supervisory approval from the district attorney before Churchill's original sentencing. Accordingly, the trial court granted habeas relief, recalled and vacated his sentence, and set the matter

for resentencing. We find no error. (*In re Duval* (2020) 44 Cal.App.5th 401, 411 [“The scope of a court’s authority in granting habeas corpus relief is quite broad”].)

After we issued our order to show cause, the district attorney approved Churchill’s seven-year plea agreement in May 2024, as required by the special directive. With this approval in hand, the trial court resentenced Churchill to seven years in prison pursuant to his original plea. Given this, Churchill can no longer claim that he received unequal treatment in the application of the special directive with respect to his *new* sentence.

Nonetheless, Churchill contends that “retroactive approval for the higher sentence after the initial sentencing” fails to remedy the error. But he conveniently omits that the trial court expressly recognized that the district attorney’s “belated final approval does not suffice to cure the procedural defect here.” Thus, by granting the habeas petition and recalling and vacating Churchill’s original sentence, the court did remedy the error. And because the district attorney, as required by the special directive, approved Churchill’s plea agreement before the court resentenced him, his new sentence no longer suffered from that error.

III. DISPOSITION

The judgment is affirmed.

CHOU, J.

We concur.

JACKSON, P. J.
BURNS, J.