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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,
Plaintiff and Respondent,
v.
DUILIO ADALI MERIDA
MORALES,
Defendant and Appellant.

A169331

(Contra Costa County
Super. Ct. No. 02003330305)

Duilio Adali Merida Morales was sentenced to seven years in prison after a jury convicted him of, among other offenses, driving under the influence causing injury. He contends that he is entitled to resentencing because the trial court relied prejudicially on the erroneous finding that he was presumptively ineligible for probation under Penal Code section 1203, subdivision (e)(3).¹ The Attorney General argues that the asserted error was harmless but nonetheless agrees that remand for resentencing is required in light of two other sentencing errors. We agree that Merida Morales should be resentenced and therefore vacate his sentence and remand for a new sentencing hearing.

¹ Undesignated statutory references are to the Penal Code.

BACKGROUND

In June 2020, Merida Morales crashed his vehicle into a parked truck while attempting to make a U-turn. The impact caused the truck to roll forward, injuring a man who was standing between the truck and a sedan parked in front of the truck. Merida Morales briefly left the scene of the accident but was subsequently located and interviewed by police having returned to the area. Merida Morales was arrested based on an officer's belief that Merida Morales was under the influence of alcohol.

A jury found Merida Morales guilty of driving under the influence causing injury (Veh. Code, § 23153, subd. (a); count 1), driving with a blood-alcohol content of 0.08 percent or more causing injury (Veh. Code, § 23153, subd. (b); count 2), hit-and-run driving (Veh. Code, § 20002, subd. (a); count 3), and driving without a valid driver's license (Veh. Code, § 12500, subd. (a); count 4). The jury also found true the enhancements alleged on counts 1 and 2 that Merida Morales's blood-alcohol content was 0.15 percent or more (Veh. Code, § 23578) and that Merida Morales personally inflicted great bodily injury during the commission of the crime (Pen. Code § 12022.7, subd. (b)).

The probation report filed prior to the sentencing hearing recommended that probation be denied and that Merida Morales be sentenced to prison. The report indicated that "per, [the prosecutor] the defendant is 'presumptively ineligible and statutorily ineligible' " for probation. The prosecution's sentencing brief stated that Merida Morales was presumptively ineligible for probation under section 1203, subdivision (e)(3). The prosecutor further argued that if the presumption were overcome, Merida Morales nevertheless remained an inappropriate candidate for probation because of the seriousness of the crime and because

the victim was particularly vulnerable. The prosecutor sought an aggravated sentence because “the crime involved a great bodily harm and a high degree of callousness.” Defense counsel requested that Merida Morales be placed on probation and argued that his presumptive ineligibility for probation “can be overcome in the interests of justice” as it was “clear that [he] never intended to harm anyone,” he had no prior criminal record, and he “was suffering from alcohol addiction.”

At the sentencing hearing, the trial court noted that Merida Morales was presumptively ineligible for probation due to the level of injury sustained by the victim and that the presumption had not been overcome based on any unusual circumstances. The court also noted that “frankly” probation would not be “suitable” in this case because it did not believe that the sentence that could be imposed on a grant of probation, “which is a maximum of one year County Jail half time eligible, would be close to being sufficient to deter the defendant and those like him with alcohol problems in the public and serve the sentencing from getting behind the vehicle and drinking again or drinking for the first time causing this harm.”

The court sentenced Merida Morales to the middle term of two years on count 1 with a consecutive five years for the great bodily injury enhancement. The trial court imposed and stayed pursuant to section 654 an identical seven-year term on count 2. As to his misdemeanor conviction for hit-and-run driving (count 3), the court stated: “I am imposing zero jail time, zero probation. . . . No additional punishment. Simply zero jail time; zero probation on Count Three.” The court noted that it was imposing no additional punishment on count 3 because it relied on the fact underlying this count in selecting the middle term on count 1. Regarding count 4, the court stated, “Same goes for Count Four, driving without a license. I’m not

imposing additional County Jail time for that. Zero jail time; zero probation for that.”

DISCUSSION

The parties agree that the trial court erroneously believed that Merida Morales was presumptively ineligible for probation under section 1203, subdivision (e)(3), which provides that “[e]xcept in unusual cases in which the interests of justice would best be served if the person is granted probation, probation shall not be granted to . . . [a]ny person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which that person has been convicted.” As the Attorney General explains, “The statute’s use of the term ‘willfully’ in this context means that a defendant is only presumptively ineligible for probation if he had the intent to cause great bodily injury (or torture), ‘not merely that the crime resulted in great bodily injury.’ (*People v. Lewis* (2004) 120 Cal.App.4th 837, 853.) Here, the parties and the trial court universally agreed that appellant had not intended to injure anyone.”

The trial court’s exercise of sentencing “‘discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue.’” (*People v. Nuno* (2018) 26 Cal.App.5th 43, 49.) As Merida Morales argues, where a court “bases its determination to deny probation in significant part upon an erroneous impression of the defendant’s legal status, fundamental fairness requires that the defendant be afforded a new hearing and ‘an informed, intelligent and just decision’ on the basis of the facts.” (*People v. Ruiz* (1975) 14 Cal.3d 163, 168, italics omitted.) The Attorney General contends, however, that under *People v. Salazar* (2023) 15 Cal.5th 416, 425, the trial court’s erroneous belief that Merida Morales was presumptively ineligible for probation was harmless because “‘the

record ‘clearly indicate[s]’ that the trial court would have reached the same conclusion ‘even if it had been aware that it had such discretion.’ ”””

Merida Morales disagrees. He argues that the court’s alternative finding that probation was not “suitable” because a probationary disposition would be too short relied on the erroneous belief that the court would be limited to a one-year jail term. He suggests that the court’s sentencing discretion was not limited to a one-year term because the court could have ordered that he serve consecutive sentences on some of his convictions.² Merida Morales argues further that, having improperly determined that he was ineligible for probation, the court did not fully consider alternative sentencing options for mental health and substance abuse treatment that could accompany a grant of probation.

We need not decide whether the error was prejudicial because we accept the Attorney General’s concession that remand for resentencing is required in any event because the trial court failed to impose sentence on counts 3 and 4. At sentencing, a court must orally impose sentence on all counts for which the defendant was convicted. (§ 12; *In re Sandel* (1966) 64 Cal.2d 412, 415 [the trial court has a duty to either impose a sentence or grant probation as to all counts for which a defendant is convicted]; *People v. Alford* (2010) 180 Cal.App.4th 1463, 1468 [“Upon conviction it is the duty of the court to pass sentence on the defendant and impose the punishment prescribed. [Citations.] Pursuant to this duty the court must either sentence

² Section 19.2 reads, in relevant part, “In no case shall any person sentenced to confinement in a county or city jail . . . as a condition of probation upon conviction of either a felony or a misdemeanor . . . except upon . . . conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year.”

the defendant or grant probation in a lawful manner; it has no other discretion' ”].) A conviction for hit-and-run driving in violation of Vehicle Code section 20002 is a misdemeanor which “shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.” (Veh. Code, § 20002, subd. (c).) At the time of Merida Morales’s offense, driving without a license in violation of Vehicle Code section 12500 was a misdemeanor. (Former Veh. Code, § 40000.11, subd. (b).) As of January 2023, it had been reclassified as an infraction. (See Veh. Code, § 40000.1 [violating the Vehicle Code is an infraction unless otherwise provided].) The court’s comment that it was imposing “zero jail time, zero probation” on these counts is an unauthorized sentence because it was not among the prescribed punishments.

Accordingly, we remand for a full resentencing hearing.

DISPOSITION

Merida Morales’s sentence is vacated and the matter remanded for resentencing. On remand, the trial court shall also designate count 4 as an infraction.

GOLDMAN, J.

WE CONCUR:

BROWN, P. J.
MOORMAN, J. *

*Judge of the Mendocino Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.