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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLY GUZMAN,

Defendant and Appellant.

F088004

(Super. Ct. No. BF161545A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. David Wolf, Judge.

Joshua G. Wilson, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Kimberley A. Donohue, Assistant Attorney General, Barton Bowers and Clifford E. Zall, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Hill, P. J., Peña, J. and Meehan, J.

Appellant and defendant Billy Guzman appeals following recall of his 2018 sentence for resentencing under Penal Code section 1172.75.¹ He claims that the People’s failure to properly reconstruct exhibit No. 1 from the resentencing hearing, which was his rap sheet, denies him an adequate record for purposes of appellate review, necessitating vacatur of his sentence and remand for a new resentencing hearing. We find no prejudicial error and affirm the judgment.

PROCEDURAL HISTORY AND BACKGROUND

In 2018, defendant pleaded no contest to voluntary manslaughter. (§ 192, subd. (a).) He also admitted having three prior serious or violent felony convictions for voluntary manslaughter, first degree burglary, and second degree robbery, within the meaning of the Three Strikes law, and two prior prison term enhancements. (§§ 667, subds. (a)(1), subds. (b)–(i), 1170.12, subds. (a)–(d), 667.5, former subd. (b).) He was sentenced to 25 years to life with an additional 15 years for three prior felony conviction enhancements and two years for the two prior prison term enhancements.

Effective January 1, 2020, the Legislature “amended section 667.5, subdivision (b) to limit the one-year prison prior enhancement to only prison terms served for convictions of sexually violent offenses, as defined in Welfare and Institutions Code section 6600, subdivision (b).” (*People v. Christianson* (2023) 97 Cal.App.5th 300, 309 (*Christianson*) [Sen. Bill No. 136 (2019–2020 Reg. Sess.)].) Courts of Appeal, including this one (*People v. Lopez* (2019) 42 Cal.App.5th 337, 341), “generally found that the amendments applied retroactively to all cases not yet final on January 1, 2020, and that they rendered previously imposed prison prior enhancements, not based on convictions for sexually violent offenses, legally invalid” (*Christianson, supra*, at p. 309).

Subsequently, “the Legislature expanded the scope of the retroactivity” by enacting former section 1171.1, now section 1172.75, which provides that “[a]ny

¹ All further statutory references are to the Penal Code unless otherwise specified.

sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense ... is legally invalid.” (*Christianson, supra*, 97 Cal.5th at pp. 309–310 [Sen. Bill 483 (2021–2022 Reg. Sess.)], quoting § 1172.75, subd. (a).) “The remainder of the statute then sets forth a mechanism for identifying and resentencing individuals currently serving a term in jail or prison that includes a now invalid section 667.5, subdivision (b) sentence enhancement.” (*Christianson, supra*, at p. 310, citing § 1172.75, subds. (b)–(d).)

In October 2023, defendant was identified as eligible for resentencing under section 1172.75, and he was resentenced on May 3, 2024. At the resentencing hearing, defendant’s counsel requested that in addition to striking the two prior prison term enhancements, the court dismiss the three prior felony conviction enhancements and two of defendant’s three strike convictions, resulting in a determinate term of 22 years rather than 25 years to life. Counsel argued that defendant’s opportunities were limited given his crime and sentence, but he had taken advantage of the opportunities he could, including working, taking educational courses, and mentoring other inmates. In her sentencing statement, counsel noted defendant was 60 years old; had been disciplinary free since 2014, when the underlying crime in this case was committed; and he had been a gang dropout since the late 1990’s.

The prosecutor opposed any relief and introduced exhibit No. 1, which he stated was defendant’s rap sheet. He then stated that defendant suffered three strike convictions: manslaughter in 1983, first degree burglary in 1986, and second degree robbery in 2003; and that defendant was in prison when he killed his cellmate in 2014, leading to the 2018 voluntary manslaughter conviction in this case. The prosecutor also noted defendant had multiple rules violations in prison.

The trial court declined to grant any relief other than striking the two prior prison term enhancements, and reimposed the same sentence, for a total term of 25 years to life plus 15 years.

Defendant timely appealed.

Appellate counsel subsequently sought a copy of exhibit No. 1 and, on November 12, 2024, a Kern County Superior Court clerk filed a responsive declaration stating that the exhibit had been returned to the Kern County District Attorney's Office and could not be located.

On January 22, 2025, this court granted defendant's motion for an order directing the People to recreate the exhibit, and, on February 11, 2025, the record was augmented to include a declaration from a prosecutor attesting that the prosecutor who handled the resentencing was no longer with the office and the exhibit was not in the file. He included a copy of defendant's rap sheet that he "believe[s]" is the same document that comprised exhibit No. 1.

On appeal, defendant argues the exhibit lacks foundation and authentication, constitutes hearsay, and is not certified within the meaning of section 969b. Therefore, it does not constitute a recreated record and he claims deprivation of an adequate record to permit meaningful appellate review, entitling him to remand for resentencing.

DISCUSSION

I. Legal Principles

"Under the due process and equal protection clauses of the federal Constitution's Fourteenth Amendment, and under state law, a criminal defendant is entitled to an appellate record that is 'sufficient to permit adequate and effective appellate review.'" (*People v. Elliott* (2012) 53 Cal.4th 535, 595, quoting *People v. Rogers* (2006) 39 Cal.4th 826, 857.) "[N]o presumption of prejudice arises from the absence of materials from the appellate record" (*People v. Wilson* (2005) 36 Cal.4th 309, 325, quoting *People v. Samayoa* (1997) 15 Cal.4th 795, 820 (*Samayoa*), and "defendant has the burden of

showing the record is inadequate to permit meaningful appellate review” (*Elliott, supra*, at p. 595, quoting *Rogers, supra*, at p. 858; accord, *Wilson, supra*, at p. 325).

““[R]eversal is indicated only where critical evidence or a substantial part of a [record] is irretrievably lost or destroyed, and there is no alternative way to provide an adequate record so that the appellate court may pass upon the question sought to be raised.”” (*People v. Galland* (2008) 45 Cal.4th 354, 370.)

II. Error Harmless

The People concede that exhibit No. 1, defendant’s rap sheet, was not properly reconstructed but, assuming it was not adequately reconstructed for purposes of appellate review, the error is harmless because the trial court did not rely extensively or exclusively on the exhibit in making its ruling. Defendant responds that without the information from his rap sheet, there is a reasonable probability of a more favorable outcome and he is entitled to remand to the trial court for reconsideration.

“[I]t is defendant’s burden to show that deficiencies in the record are prejudicial.” (*People v. Howard* (1992) 1 Cal.4th 1132, 1165; accord, *People v. Barrett* (2025) 17 Cal.5th 897, 998; *People v. Bennett* (2009) 45 Cal.4th 577, 589.) “[I]nconsequential inaccuracies or omissions in a record cannot prejudice a party; if in truth there does exist some consequential inaccuracy or omission, the appellant must show what it is and why it is consequential.” (*Howard, supra*, at p. 1165; accord, *Barrett, supra*, at p. 998; *Bennett, supra*, at p. 589.) Omissions in the record are not prejudicial if defendant fails to show the lost exhibit has “left him unable to proceed with his appeal on a record adequate to permit meaningful appellate review.” (*People v. Coley* (1997) 52 Cal.App.4th 964, 971 (*Coley*), quoting *People v. Osband* (1996) 13 Cal.4th 622, 663 (*Osband*).)

The record reflects exhibit No. 1 was defendant’s rap sheet and the prosecutor referred to the rap sheet when describing defendant’s three prior strike convictions and 2018 manslaughter conviction, and the trial court acknowledged it read and considered the exhibit. The court then went on to commend defendant on the accomplishments set

forth in his petition, but noted he had seven rules violations and “left two dead bodies [in his] wake.” The court concluded, “I’m finding by clear and convincing evidence that this defendant is a threat to society. I commend his efforts, but those classes and efforts do not make up for killing two people” The court acknowledged its discretion to strike the felony conviction enhancements and stated, “I certainly looked with great detail at the Petition that was filed. They do not outweigh the negative conduct that I have seen.” At the end of the hearing, the parties stipulated to the return of exhibit No. 1 to the prosecutor.

We find defendant fails to meet his burden of showing prejudicial error. The trial court did not retain the exhibit because the parties stipulated to its return to the prosecutor, but it appears a photographic record was not made, as required. (§§ 1417, 1417.2.) Further, for reasons that are unclear, the People did not obtain a certified copy of the rap sheet for submission when instructed to recreate the exhibit. (§ 969b.) However, this is not an exhibit that was lost or destroyed and *cannot* be reconstructed, and, critically, the failure of the People to submit a certified copy does not preclude adequate appellate review. The appellate record includes the criminal complaint, information, plea form, minute orders and sentencing transcript from defendant’s 2018 conviction and sentencing for voluntary manslaughter, the case in which he was charged with and admitted having three prior strike convictions for voluntary manslaughter, first degree burglary, and second degree robbery.² To the extent defendant sought to argue on appeal that the trial court erred in resentencing him, he fails to explain how the absence

² Defendant argues that these documents were not admitted into evidence at the hearing, but defendant’s sentence was recalled and he was resentenced in Kern County Superior Court case No. BF161545A, in which these documents are part of the superior court’s record, just as they are part of this appellate record. (Cal. Rules of Court, rule 8.320; see Evid. Code, § 452, subd. (d).) Defendant’s reliance on *Zeth S.* for this proposition is misplaced. (See *In re Kenneth D.* (2024) 16 Cal.5th 1087, 1102, citing *In re Zeth S.* (2003) 31 Cal.4th 396, 405 [“Ordinarily, appellate courts review a trial court’s judgment based on the record as it existed when the trial court ruled.”].)

of a certified rap sheet on appeal precluded him from doing so. In the proceedings below, defendant also raised no disputes concerning the proceedings, including the trial court's consideration of the rap sheet, and, notably, he was represented by counsel who did not object during the hearing. Finally, this is not a situation where, if remanded for resentencing, the trial court would proceed without a rap sheet and without otherwise considering defendant's criminal history, such that there is a reasonable probability that the outcome would be more favorable to defendant, as he argues. (See *Osband*, *supra*, 13 Cal.4th at p. 664 [court rejected claim deficient record precluded effective representation by appellate counsel because "[t]here is no reasonable probability that the outcome of this appeal differs because of the deficiencies in the record before us"]; *In re Roderick S.* (1981) 125 Cal.App.3d 48, 53–54 [judgment reversed where destruction of knife precluded appellate court from determining whether substantial evidence supported finding the minor had a switchblade knife]; but see *Coley*, *supra*, 52 Cal.App.4th at p. 973 [*Roderick S.* unpersuasive because reconstruction of exhibit or settled statement not considered; court impliedly presumed knife could not be reconstructed].)

In sum, we discern no prejudice to defendant arising from the People's failure to recreate and submit the missing rap sheet in proper form. Defendant has not demonstrated that the error complained of precludes review of claims he sought to raise, and he has not demonstrated there is a reasonable probability of a more favorable outcome absent the error. (*Osband*, *supra*, 13 Cal.4th at p. 664; see *Coley*, *supra*, 52 Cal.App.4th at p. 970 [burden of demonstrating prejudice "is not carried by simply citing an administrative dereliction. Lost exhibits may be reconstructed in many instances. [Citation.] ... The test is whether the exhibits can be reconstructed sufficiently to determine there was no prejudicial error at trial."].)

Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.