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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

VINCENT ERNEST MARQUEZ,

Defendant and Appellant.

H052102
(Santa Cruz County
Super. Ct. No. WF00282)

In 2009, a jury convicted defendant Vincent Ernest Marquez of residential burglary and receiving stolen property, and found true an allegation that during the burglary someone other than an accomplice was present (Pen. Code¹, § 459). The trial court additionally found that Marquez had three prior strike convictions and five prior felony convictions for which he had served prison terms. (§§ 667, subds. (b)–(i), 667.5, subd. (b).) The court sentenced Marquez to a total term of 44 years to life in prison.

In 2022, following the passage of Senate Bill No. 483 (2021–2022 Reg. Sess.) (Senate Bill 483), Marquez requested that he be resentenced because his section 667.5, subdivision (b) enhancement was now legally invalid. The trial court struck the one-year prison prior enhancement, but declined to resentence Marquez further. On appeal, a different panel of this court reversed and remanded with directions of the trial court to

¹ Undesignated statutory references are to the Penal Code.

conduct a full resentencing as required under section 1172.75. (*People v. Marquez* (Oct. 2, 2023, H050331) [nonpub. opn.].)²

At Marquez’s resentencing hearing on remand, Marquez submitted a *Romero*³ motion requesting that the trial court strike some or all of his strike prior allegations. After hearing argument, the trial court struck some of the enhancements, but concluded that it would be an abuse of discretion to strike any of Marquez’s strike priors. The trial court subsequently resentenced Marquez to an aggregate sentence of 35 years to life in prison.

On appeal, Marquez claims that the trial court abused its discretion in refusing to strike his strike priors or resentence him on the stolen property charge in accordance with the current version of the “Three Strikes” law. He also requests that the abstract of judgment be corrected to properly reflect his custody credits. In the Attorney General’s initial briefing, the Attorney General partially conceded that Marquez should have been resentenced in accordance with the current Three Strikes law and that the correct custody credits were erroneously omitted from the abstract of judgment. However, in supplemental briefing, both parties now agree that based on the recent California Supreme Court decision in *People v. Superior Court (Guevara)* (2025) 18 Cal.5th 838 (*Guevara*), the matter should be remanded for resentencing, and custody credits should be recalculated.

For the reasons explained below, we reverse the judgment and remand for resentencing consistent with this opinion.

² On our own motion, we take judicial notice of the opinions in Marquez’s prior appeals on the same underlying case, *People v. Marquez* (Oct. 2, 2023, H050331) [nonpub. opn.], and *People v. Marquez* (Apr. 10, 2012, H033995) [nonpub. opn.].)

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual Background*⁴

On May 9, 2008, victim A.S.⁵ was alone in her home, located in a rural area of Watsonville, when she heard a knock on the front door. When she looked out a window, she saw a stranger whom she later identified as Marquez, and immediately checked the back door to see that it was locked. A.S. then peered out a bathroom window and saw Marquez, another man, and a woman walking down her driveway toward the back of the house. The three people came onto A.S.'s back deck, and one of the men approached the screen door; A.S. then heard the noise of someone trying to pry open a window screen in the kitchen. When she heard the screeching sound of the window being pried open, A.S. fled to the bedroom and locked the door, then called her husband and 911. Before police arrived, someone tried to open her bedroom door, and she heard doors slamming and voices and footsteps inside the house.

Santa Cruz County Deputy Sheriff Brian Erbe arrived at the scene, and observed two men, one of whom he later identified as Marquez, walking toward him on the driveway. After Erbe ordered them to stop, Marquez fled toward the back of the house and disappeared. Several seconds later, he reappeared on the other side of the house, ran toward a fence, and tossed something into a field, then disappeared behind the house. Around this time, Watsonville Police Officer Brian Fulgoni was driving on a dirt road alongside a field behind the house, and saw a man who matched Marquez's description. Fulgoni got out of his car, chased after the man – who Fulgoni later identified as Marquez, and ordered him to stop. Marquez complied and was arrested.

⁴ We draw the relevant factual background in part from this court's prior opinion in Marquez's first appeal on the same case. (*People v. Marquez, supra*, H033995.)

⁵ We refer to the victims in the proceedings by their initials only to protect their personal privacy interests pursuant to California Rules of Court, rule 8.90(b)(4) and (b)(10).

Erbe brought Marquez to A.S., who identified him as the person she had seen knocking on her door. Erbe also located 11 pieces of jewelry and a jewelry box in the field where he had seen Marquez toss something. The items were later identified as belonging to victim M.R., who lived with A.S.

B. Procedural Background

1. Verdict and Original Sentence

On February 10, 2009, the jury convicted Marquez of first degree felony burglary (§ 459; count 1) and receiving stolen property (§ 496, subd. (a); count 2). With respect to the burglary charge, the jury also found true an allegation that during the burglary someone other than an accomplice was present. The trial court subsequently found that Marquez had three prior strike convictions and five prior felony convictions for which he had served prison terms. (§§ 667, subds. (b)–(i), 667.5, subd. (b).)

On March 16, 2009, the trial court sentenced Marquez to an aggregate sentence of 44 years to life, consisting of the following: (1) 25 years to life for first degree burglary based on the prior strike findings (count 1); (2) 15 years for the prior serious felony convictions (§ 667, subd. (a)) ; (3) three years for the prior violent felony prison term (§ 667.5, subd. (a) ; and (4) one year for the prior prison term (§ 667.5, sub. (b)). The court imposed a sentence of 25 years to life for receiving stolen property (count 2), which it stayed pursuant to section 654.

Marquez appealed, contending numerous instructional and evidentiary errors, and a different panel of this court affirmed the judgment. (*People v. Marquez, supra*, H033995.)

2. Section 1172.75 Resentencing Proceedings

a. First Petition, Hearing, and Appeal

On March 2, 2022, Marquez filed a petition for resentencing pursuant to Senate Bill 483.⁶ He argued that under the new law, his one-year enhancement under section 667.5, subdivision (b) was no longer valid, and the trial court should recall and resentence him by removing this enhancement, while also applying “any other legal changes” permitting the reduction of his sentence.

Following an evidentiary hearing in August 2022, the trial court struck the one-year enhancement pursuant to section 667.5, subdivision (b), and resented Marquez to a term of 43 years to life. However, the court declined to exercise its discretion to consider any other changes in the law since the original sentence in 2009, including whether it should strike any of the prior serious felony allegations.

On appeal, Marquez argued, and the Attorney General conceded, that a remand for a full resentencing was required under section 1172.75, and the trial court was required to apply all changes to sentencing laws that occurred after Marquez was sentenced. (*People v. Marquez, supra*, H050331.) A different panel of this court agreed, noting that numerous changes in sentencing law had taken place since 2009 that could affect the length of Marquez’s sentence, and that the record did not reflect the trial court would

⁶ Effective January 1, 2020, the Legislature passed Senate Bill No. 136 (2019–2020 Reg. Sess.), which amended section 667.5, subdivision (b) to limit prior prison term enhancements to sexually violent offenses only. (Stats. 2019, ch. 590, § 1.) The Legislature subsequently passed Senate Bill 483, which made this change retroactive by adding section 1171.1 (Stats. 2021, ch. 728, § 3), which was later renumbered as section 1172.75. (Stats. 2022, ch. 58, § 12.) Under section 1172.75, “[a]ny sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5,” except for enhancements for certain sexually violent offenses, “is legally invalid.” (§ 1172.75, subd. (a).) Once the trial court has confirmed that a defendant’s current judgment includes a prior prison term enhancement that is now legally invalid, the trial court “shall recall the sentence and resentence the defendant.” (§ 1172.75, subd. (c).)

have reached the same decision if it had been aware of the scope of its discretionary powers. (*People v. Marquez, supra*, H050331.) This court therefore reversed and remanded with directions for the trial court to vacate and resentence Marquez in accordance with section 1172.75, subdivision (d). (*People v. Marquez, supra*, H050331.)

b. Proceedings on Remand

i. Supplemental Briefing on Resentencing

Following remand, on March 27, 2024, the People filed a supplemental brief opposing any further reductions of Marquez’s sentence. The People argued that the trial court did not have the authority under section 1172.75 to strike Marquez’s prior strike allegations because the Three Strikes law constituted an alternate sentencing scheme, and section 1172.75 only permitted the striking of enhancements, with no reference to the Three Strikes law. The People further asserted that even if the trial court found it had the discretion to strike Marquez’s prior strikes, it should not exercise such authority because Marquez was precisely the type of “career criminal” that fell within the spirit of the Three Strikes law, based on his substantial criminal history and lack of attempts at rehabilitation. The People finally contended that Marquez would pose a threat to public safety if released.

In response, Marquez argued that he was entitled to reconsideration of his strike prior allegations as part of his resentencing, and that the appellate cases holding otherwise were “poorly reasoned and wrongly decided.” Marquez also requested that the trial court consider: (1) striking the five-year enhancements for his prior serious felony convictions, pursuant to Senate Bill No. 81 (2021–2022 Reg. Sess.) (Senate Bill 81), which modified section 1385 to grant trial courts the discretion to dismiss enhancements; and (2) redesignate count 2 (the stolen property charge) as the principal offense, pursuant to Assembly Bill No. 518 (2021–2022 Reg. Sess.) (Assembly Bill 518). In support of his request, Marquez identified several mitigating circumstances in his case, including his history of drug abuse and addiction, his advanced age and ill health, a substantial support

system to assist him upon release, and steps he had taken at rehabilitation, including participation in victim awareness and recognition events.

ii. Hearing and Resentencing Order

On April 18, 2024, the trial court held a hearing on Marquez's petition. At the outset of the hearing, Marquez filed a *Farettta*⁷ motion requesting that he represent himself, which the trial court granted. Marquez then requested to file a *Romero* motion and address mitigating factors that would justify reduction of his sentence. Marquez argued that his criminal history reflected that all his crimes were not violent, did not involve any weapons, and were only "property crimes" that did not make him a danger to anyone. Marquez acknowledged his long history of drug addiction, and that his status based on his sentence prevented him from engaging in drug treatment programming that would assist him with his addiction. In response, the People argued that Marquez's offenses did involve violence, particularly the first degree person present burglary offense in the current case where the affected victim was "very traumatized." The People also noted that Marquez had a "a very lengthy and dangerous criminal history, incredibly poor performance on parole...and just lack of self-reflection and accountability that we think shows serious dangerousness to the public."

While the trial court indicated that reconsideration of a *Romero* motion may be "problematic", the trial court noted that even if it did have the discretion to strike any strike priors, it would not do so because Marquez did not fall outside the spirit of the Three Strikes law. The court further noted that given the number of strike priors in Marquez's case, the lack of any significant period of non-criminal conduct in Marquez's history, and the similarities between the strike offenses and the current offenses, it would be an abuse of the court's discretion to strike "enough" priors to reduce Marquez's sentence to a term less than 25 years to life.

⁷ *Farettta v. California* (1975) 422 U.S. 806.

The trial court next indicated that it found two applicable mitigating circumstances under section 1385, subdivision (c), that would justify striking some of Marquez's enhancements as follows: (1) multiple enhancements were alleged in a single case; and (2) the enhancement was based on a conviction that was more than five years old. The trial court further noted that one of Marquez's prior offenses for robbery was being utilized in three ways: as a prior strike offense, as one of the prior serious felony offenses enhancements under section 667, subdivision (a), and as a prior violent felony prison term enhancement under section 667.5, subdivision (a). The trial court concluded that it "just [didn't] see us doing anything like [this] today," and therefore dismissed the three-year enhancement under section 667.5, subdivision (a), and one of the five-year enhancements under section 667, subdivision (a). The court noted that it was choosing not to dismiss the remaining section 667, subdivision (a) enhancements because Marquez had "so many prior prison terms, so many prior serious felonies, so many prior felonies, you know, he just has so many -- he does have such a huge exposure, and I do think that this is a fair and just sentence under all the circumstances and under all the laws that would be applicable today."

The trial court accordingly resentenced Marquez to a new total sentence of 35 years to life in prison, consisting of the following: (1) an indeterminate sentence of 25 years to life for first degree burglary (count 1); (2) an indeterminate sentence of 25 years to life for receiving stolen property (count 2), stayed pursuant to section 654; and (3) a consecutive determinate term of 10 years, based on the two remaining five-year prior serious felony enhancements under section 667, subdivision (a).

Marquez timely appealed.

II. DISCUSSION

Marquez initially raised three primary contentions on appeal. First, he argues that the trial court abused its discretion by denying his *Romero* motion to strike any of his strike prior offenses. Second, he claims that the trial court erred in not resentencing him

on the receiving stolen property charge to a lower term in accordance with current Three Strikes law. Finally, Marquez requests that the abstract of judgment be corrected to properly reflect his actual and conduct credits, as these were not calculated by the trial court during resentencing.

A. *Applicable Legal Principles*

1. Resentencing Under Section 1172.75

Section 1172.75 provides that once the trial court has confirmed that a defendant's current judgment includes a prior prison term enhancement that is now legally invalid, the court "shall recall the sentence and resentence the defendant." (§ 1172.75, subd. (c).) In so doing, the trial court is directed to follow specific instructions while resentencing. (§ 1172.75, subd. (d).) For example, section 1172.75, subdivision (d)(1) provides that "[r]esentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed." In addition, when resentencing, the court "shall apply . . . any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing." (§ 1172.75, subd. (d)(2).)

Section 1172.75 also provides for consideration of other factors during resentencing. "The court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice." (§ 1172.75, subd. (d)(3).)

2. Three Strikes Law

The Three Strikes law was enacted in 1994. (Stats. 1994, ch. 12, § 1, p. 71, codified at § 667, subds. (b)–(i).) The Legislature's intent in passing the Three Strikes law was “to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious [and/]or violent felony offenses.” (§ 667, subd. (b).) As relevant here, when a defendant has two or more prior serious or violent felony convictions, they must be sentenced on their current felony offense to an indeterminate term of life imprisonment.⁸ (§ 667, subd. (e)(2)(A).)

“[T]he Three Strikes law does not offer a discretionary sentencing choice, as do other sentencing laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court ‘conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.’ [¶] In this light, extraordinary must the circumstance be by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack.” (*People v. Strong* (2001) 87 Cal.App.4th 328, 337–338, fn. omitted.) “Thus, the three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.” (*People v. Carmony* (2004) 33 Cal.4th 367, 378.)

⁸ At the time Marquez was sentenced in 2009, the trial court was required to impose an indeterminate life sentence irrespective of whether the current offense was a serious or violent felony. As will be discussed *infra*, this was subsequently modified by the Three Strikes Reform Act of 2012.

In 2012, the electorate passed the Three Strikes Reform Act of 2012 (Prop. 36, as approved by voters, Gen. Elec. (Nov. 6, 2012) (Reform Act)), which amended the law to reduce the punishment prescribed for certain third strike defendants. The electorate additionally authorized persons ‘presently serving’ an indeterminate term of life imprisonment imposed under the prior version of the Three Strikes law to seek resentencing under the amended penalty scheme by filing a petition for recall of sentence. (§ 1170.126, subd. (a).) Pursuant to section 1170.126, “ ‘within two years after the effective date of the act … or at a later date upon a showing of good cause,’ such persons can file a petition for a recall of sentence before the trial court that entered the judgment of conviction. [Citation.] If the petitioner would have qualified for a shorter sentence under the Reform Act version of the law, taking into consideration the disqualifying factors [citation], section 1170.126 provides that he [or she] “shall be resentenced pursuant to [the Reform Act] unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety” [citation]. In exercising this discretion, the court may consider the defendant’s criminal conviction history, the defendant’s disciplinary record and record of rehabilitation while incarcerated, and “[a]ny other evidence the court … determines to be relevant.” [Citation.]’ [Citation.] The Act, therefore, enacted two kinds of reforms: prospective, by exempting some newly-charged defendants from an indeterminate term, and retrospective, by permitting resentencing for some already convicted.” (*People v. Frierson* (2017) 4 Cal.5th 225, 231.)

3. California Supreme Court Decision in *Guevara*

In the recent case of *Guevara*, *supra*, 18 Cal.5th 838, the California Supreme Court addressed the question of whether a full resentencing under section 1172.75 also permitted the trial court to consider resentencing in accordance with the Reform Act. The *Guevara* court held that “as a matter of constitutional avoidance,” section 1172.75 must be construed as incorporating the public safety determination under section

1172.126 as a condition for nonserious, nonviolent felony offenders to obtain the benefit of the Reform Act during resentencing. (*Guevara, supra*, at pp. 850, 861–865.) The court noted that the voters’ intention in passing the Reform Act, particularly by including the requirement of whether resentencing poses an unreasonable risk of danger to public safety, was to strike a balance between reform and safety, and such an intention would be honored by “[i]nterpreting section 1172.75 as incorporating section 1170.126’s public safety override.” (*Guevara, supra*, at p. 871.) Therefore, if a defendant demonstrates eligibility under the Reform Act at a section 1172.75 resentencing, the trial court must first determine whether resentencing the defendant under the revised provisions of the Reform Act would pose an unreasonable risk of danger to public safety. (*Guevara, supra*, at p. 877.) If no such risk is demonstrated, the court shall resentence the defendant pursuant to the revised penalty provisions of the Reform Act. (*Ibid.*)

B. Analysis

1. Section 1172.75 Resentencing and the Reform Act

Because the California Supreme Court issued its decision in *Guevara* after the parties filed their initial briefing, we requested supplemental briefing regarding the applicability of *Guevara* to the issues raised by Marquez on appeal. In their supplemental briefs, both Marquez and the Attorney General agree that based on the holding in *Guevara*, the matter should be remanded for resentencing in order for the trial court to determine whether the sentence on count 2, which is not a serious or violent felony, should be reduced from the previously required mandatory 25 years to life to a sentence of double the punishment for the offense, in accordance with the Reform Act. The parties also agree that in making this decision, the trial court should consider whether reduction of his sentence in this manner would pose an unreasonable risk of danger to public safety, as provided under section 1170.126, subdivision (f). However, the

Attorney General asserts that resentencing should only apply to count 2, and the judgment should otherwise be affirmed.

We agree that a remand for resentencing is appropriate in this case. Because the trial court did not have the benefit of the Supreme Court’s decision in *Guevara* when it issued its ruling, it concluded it was not authorized to resentence Marquez under the Reform Act as part of his section 1172.75 resentencing. In addition, the record does not reflect that the trial court examined or decided the question of whether granting relief under the Reform Act to Marquez would pose an unreasonable risk of danger to public safety. Further, while we recognize that it is only count 2 that would be eligible for a reduced sentence under the Reform Act, we do not find it appropriate to remand for resentencing on that count alone. “Generally, ‘when a sentence is subject to recall, “the resentencing court has jurisdiction to modify *every* aspect of the sentence, and not just the portion subjected to the recall.”’ [Citations.] Relatedly, our Supreme Court has explained that ‘the full resentencing rule allows a court to revisit all prior sentencing decisions when resentencing a defendant.’” (*People v. Rogers* (2025) 108 Cal.App.5th 340, 358, quoting *People v. Valenzuela* (2019) 7 Cal.5th 415, 424–425.) Therefore, we shall vacate Marquez’s sentence and remand for the trial court to resentence Marquez consistent with this opinion and the guidance offered in *Guevara*.

2. *Calculation of Custody Credits*

Marquez argues, and the Attorney General concedes, that the abstract of judgment issued after his resentencing should be modified to include his actual credits. Marquez indicates that at the conclusion of his resentencing proceedings, the trial court indicated that it did not need credits; as a result, the number of credits on the abstract of judgment was left blank with a note indicating that “CDCR to recalculate credits.”

When a trial court resentences a defendant who is currently in custody, it must calculate and credit him with all actual days spent in custody up to that time, including time in custody after the original sentencing, as well as the conduct credits ordered at the

original sentencing. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 37; see also *People v. Dean* (2024) 99 Cal.App.5th 391, 397.) We therefore agree that the trial court was required to recalculate Marquez’s credits. As the matter is being remanded for resentencing, we direct the trial court to recalculate Marquez’s credits on remand.

III. DISPOSITION

The judgment is reversed and the matter is remanded for resentencing consistent with this opinion and the holding in *Guevara, supra*, 18 Cal.5th 838. As part of the resentencing hearing, the trial court is directed to recalculate Marquez’s custody credits and include the correct number of credits in the amended abstract of judgment.

Wilson, J.

WE CONCUR:

Danner, Acting P. J.

Rodriguez, J.*

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** Judge of the San Diego County Superior Court, assigned by the Chief Justice pursuant to Article VI, section 6 of the California Constitution