Filed 12/19/25 P. v. Gonzalez CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JUAN MANUEL GONZALEZ, JR., Defendant and Appellant.	E085067 (Super.Ct.No. INF1900461) OPINION

APPEAL from the Superior Court of Riverside County. Kristi Hester, Judge. Dismissed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Arlene A. Sevidal and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Pursuant to a negotiated plea agreement, defendant and appellant Juan Manual Gonzalez, Jr., pled guilty to assault with a firearm (Pen. Code,[1] § 245, subd. (b)) and assault with a firearm upon a peace officer (§ 245, subd. (d)(2)) with a personal use of a firearm enhancement (§ 12022.5, subd. (a)). He also admitted that he had a prior strike conviction (§ 667, subds. (c), (e)). In return, defendant was sentenced to a stipulated term of 18 years in state prison.

A few years later, defendant filed a request for resentencing under section 1172.1, as amended by Assembly Bill No. 600 (2023-2024 Reg. Sess.) (Stats. 2023, ch. 446), which the court denied. On appeal, defendant contends that the trial court abused its discretion and failed to appreciate that it was not bound by the terms of the plea agreement. We dismiss the appeal.

II.

PROCEDURAL BACKGROUND

On July 8, 2020, pursuant to a negotiated disposition, defendant pled guilty to assault with a semiautomatic firearm (§ 245, subd. (b)) and assault with a semiautomatic firearm upon a peace officer (§ 245, subd. (d)(2)). In addition, defendant admitted that he had personally used a semiautomatic firearm (§ 12022.5, subd. (a)) in the commission of count 2. Defendant further admitted that he had suffered a prior strike conviction

[1] All future statutory references are to the Penal Code.

(§§ 667, subds. (c) & (e), 1170.12, subd. (c)(1)). In return, the remaining charges and enhancement allegations were dismissed, and defendant was sentenced to the negotiated term of 18 years in state prison. The sentence consisted of the low term of five years for the aggravated assault on a peace officer, doubled to 10 years due to the prior strike, a consecutive middle term of four years for its attendant firearm enhancement, and one-third the middle term of two years, doubled to four years due to the prior strike, for the other assault with a semiautomatic firearm charge.

On June 16, 2023, defendant himself filed a motion to strike the four-year firearm enhancement pursuant to Senate Bill No. 620 and Assembly Bill No. 1310. The trial court thereafter appointed counsel to represent defendant.

On January 10, 2024, the People filed an opposition to defendant's motion for resentencing, arguing that the trial court lacked jurisdiction to recall the sentence and that the court could not unilaterally undo a plea agreement.

On September 24, 2024, the trial court held a formal hearing and denied the motion because defendant's sentence was a negotiated disposition. Defendant timely filed a notice of appeal.

III.

DISCUSSION

Relying on section 1172.1, subdivision (c), which states that, "[a]ny changes to a sentence shall not be a basis for a prosecutor or court to rescind a plea agreement[,]" defendant argues that the matter should be remanded to the trial court so it can exercise

its informed discretion whether to modify defendant's sentence. Defendant asserts that the trial court had jurisdiction to rule on his assertion of eligibility for relief under section 1172.1 and, thus, the trial court's adverse ruling is an appealable order. Defendant urges us to disagree with two Courts of Appeal decisions, one from this court, that dismissed appeals from orders denying relief under section 1172.1—namely, *People v. Hodge* (2024) 107 Cal.App.5th 985 (*Hodge*) and *People v. Faustinos* (2025) 109 Cal.App.5th 687 (*Faustinos*).

The People respond that the appeal must be dismissed because a trial court's denial of a defendant-initiated request for resentencing under section 1170.12 is not appealable and does not affect the defendant's substantial rights. The People also contend that a court is without power to recall a sentence if there has been no change in sentencing law since the original sentence. We agree with the People that the appeal must be dismissed.

In 2023, the Legislature passed Assembly Bill No. 600 (2023-2024 Reg. Sess.), amending section 1172.1. "Assembly Bill [No.] 600 amended the resentencing procedure established by section 1172.1, which pertains to a resentencing commenced upon the court's own motion or recommendation by a party such as a correctional authority or district attorney." (*People v. Dowdy* (2024) 107 Cal.App.5th 1, 10.) Pursuant to section 1172.1, "the court may, on its own motion, within 120 days of the date of commitment or at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law, at any time

upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant . . . ." (§ 1172.1, subd. (a)(1).)

"A defendant is not entitled to file a petition seeking relief from the court under this section. If a defendant requests consideration for relief under this section, the court is not required to respond." (§ 1172.1, subd. (c).)

Although section 1172.1 does not entitle defendants "to petition the court for relief, a defendant is not forbidden altogether from raising the issue with a court." (*People v. Roy* (2025) 110 Cal.App.5th 991, 998, fn. omitted (*Roy*).) A defendant-initiated petition "is best viewed as merely inviting the court to consider whether it wishes to exercise its discretion under section 1172.1." (*Id*. at p. 999.)

"If the trial court is not required to act in response to a defendant's request, then [a] defendant has no right to a decision as to whether the trial court will make its own motion to recall and resentence." (*Roy*, *supra*, 110 Cal.App.5th at p. 998.) Thus, because a trial court has no obligation to act on a defendant's request, a defendant's substantial rights are not affected by an order denying his petition. (*Ibid*.; accord, *People v. Brinson* (2025) 112 Cal.App.5th 1040, 1045 (*Brinson*) ["[A] trial court's decision not to take any action on a section 1172.1 request initiated by a defendant does not affect his or her

substantial rights. [Citations.]"]; *Hodge*, *supra*, 107 Cal.App.5th at p. 996 ["If the defendant has no right to a decision, the trial court's choice not to make one does not deprive the defendant of any right, much less a substantial one."]; *Faustinos*, *supra*, 109 Cal.App.5th at p. 697, review den. June 11, 2025, S289909 ["[T]here is no appellate jurisdiction over an order declining to act on a defendant's unauthorized section 1172.1 petition, even though a court may initiate a resentencing on its own motion."].)

"The singular circumstance where we could correct a trial court error in declining to act on a defendant's unauthorized section 1172.1 petition is if a trial court stated that it lacked discretion to initiate a section 1172.1 resentencing even with an applicable change in law." (*Faustinos*, *supra*, 109 Cal.App.5th at p. 700.) However, "even assuming the trial court erroneously stated, in response to [a defendant's] unauthorized petition, that it lack[ed] authority to act on its own motion, we do not think that would convert a nonappealable order to an appealable one." (*Id.* at p. 698.)

"[A] defendant has a remedy if a trial court wrongly declares that it lacks jurisdiction to act on its own motion under section 1172.1. That remedy is to petition for a writ of habeas corpus in the trial court. [Citations.]" (*Faustinos*, *supra*, 109 Cal.App.5th at pp. 698-699.)

Here, the appeal must be dismissed. Because the trial court was not required to respond to defendant's petition, the order denying it does not affect defendant's substantial rights and is, therefore, not appealable. (*Roy*, *supra*, 110 Cal.App.5th at p. 998; accord, *Hodge*, *supra*, 107 Cal.App.5th at p. 996; *Faustinos*, *supra*, 109

Cal.App.5th at p. 697.) The court never expressly stated that it lacked discretion to consider resentencing on its own motion; rather, it simply said "[t]his was a negotiated disposition" and it did "not see a basis to strike the [section] 12022.5" enhancement. (*Faustinos*, *supra*, 109 Cal.App.5th at p. 698 ["The trial court's statement need not be read as suggesting that it believed it lacked jurisdiction to act on its own motion."].) The court's statement could be read as the court's determination not to consider the issue, despite its authority to do so, unless it was raised by another pertinent authority. (*People v. Ramirez* (2021) 10 Cal.5th 983, 1042 ["Absent evidence to the contrary, we presume that the trial court knew the law and followed it."].)

"[E]ven assuming the trial court erroneously stated, in response to [a defendant's] unauthorized petition, that it lack[ed] authority to act on its own motion, we do not think that would convert a nonappealable order to an appealable one." (*Faustinos*, *supra*, 109 Cal.App.5th at p. 698.) "[D]efendant has a remedy if a trial court wrongly declares that it lacks jurisdiction to act on its own motion under section 1172.1. That remedy is to petition for a writ of habeas corpus *in the trial court*. [Citations.]" (*Faustinos*, at pp. 698-699, italics added.)[2] We agree with *Faustinos*.

Defendant argues that *Hodge* and *Faustinos* are distinguishable from the present case because the procedural posture is materially different in that here the trial court

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[2] For this reason, we deny, without prejudice, defendant's request that we treat his appeal as a petition for writ of habeas corpus. (*Faustinos*, *supra*, 109 Cal.App.5th at p. 699, fn. 3 [" '[B]oth trial and appellate courts have jurisdiction over habeas corpus petitions, but a reviewing court has discretion to deny without prejudice a habeas corpus petition that was not filed first in a proper lower court.' [Citation.]"].)

appointed counsel and conducted a formal hearing before denying defendant's motion. Nonetheless, defendant filed a self-initiated motion for recall and resentencing under section 1172.1. Under section 1172.1, subdivision (c), defendant had no right to file such a request, and he has no right to appeal the denial of that request.

Defendant notes that the trial court could have recalled his sentence on its own motion under section 1172.1, subdivision (c). However, section 1172.1, subdivision (a), makes clear that the court's power to recall and resentence at any time beyond the 120-day postjudgment window is predicated upon changes to the sentencing laws since the time of original sentencing. Given that there had been no relevant changes in sentencing law since defendant was first sentenced, the trial court had no power to recall the sentence on its own motion. Rather, defendant urged as the basis for relief, that the court should have struck his firearm enhancement under changes to the sentencing statutes that became effective years before his guilty plea, despite defendant's express agreement to the terms of the plea agreement. Thus, absent changes to the applicable sentencing laws in effect at the time of defendant's sentencing, the court was without power to recall his sentence under section 1172.1. Since the trial court would have had no power to act, so too defendant has no right to an appeal.

"The right to appeal is statutory only, and a party may not appeal a trial court's judgment, order or ruling unless such is expressly made appealable by statute. [Citations.]" (*People v. Loper* (2015) 60 Cal.4th 1155, 1159 (*Loper*).) Defendant asserts that section 1237, subdivision (b) authorizes his appeal. That provision states that an

appeal may be taken "[f]rom any order made after judgment, affecting the substantial rights of the party." (*Loper*, at p. 1159, italics omitted.) "Our cases do not provide a comprehensive interpretation of the term 'substantial rights' as used in section 1237, subdivision (b) . . . ." (*Loper*, at p. 1161, fn. 3.) "However, a postjudgment order 'affecting the substantial rights of the party' [citation] does not turn on whether that party's claim is meritorious, but instead on the nature of the claim and the court's ruling thereto. [Citations.]" (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 600, fn. omitted (*Teal*).)

As previously noted, the four published Court of Appeal decisions addressing the appealability of a trial court's decision to deny or not to respond to a defendant's section 1172.1 request hold that such a decision is generally not appealable because the statute demonstrates that a defendant has no right to a response to a self-initiated request for recall and resentencing. (*Brinson*, *supra*, 112 Cal.App.5th 1040; *Roy*, *supra*, 110 Cal.App.5th 991; *Faustinos*, *supra*, 109 Cal.App.5th 687; *Hodge*, *supra*, 107 Cal.App.5th 985.)

We conclude that the trial court's denial of defendant's request for recall and resentencing is not an appealable order. Section 1172.1 does not in itself provide defendant with any substantial rights, and he does not identify any other basis for a substantial right under section 1237, subdivision (b), based on the trial court's decision. As a result, we are without jurisdiction to consider his appeal, and we will dismiss it.

As previously noted, under section 1172.1, subdivision (c), the trial court was not required to respond to defendant's request for the court to exercise its own authority to recall his sentence and to resentence him. This "undermine[s] any claim that defendants have a substantial right at stake when they file an unauthorized request for resentencing." (*Hodge*, *supra*, 107 Cal.App.5th at p. 996.) "If the trial court is not required to act in response to a defendant's request, then defendant has no right to a decision as to whether the trial court will make its own motion to recall and resentence." (*Roy*, *supra*, 110 Cal.App.5th at p. 998.)

Defendant relies on *Loper*, *supra*, 60 Cal.4th 1155 to argue that he may appeal from the trial court's decision to deny his resentencing request. However, *Loper* is distinguishable.

In *Loper*, the California Supreme Court concluded that the defendant could appeal a trial court's denial of a recommendation by the Department of Corrections and Rehabilitation that the defendant's sentence be recalled under section 1170, former subdivision (e), and that he be granted compassionate release. (*Loper*, *supra*, 60 Cal.4th at pp. 1158-1159.) The California Supreme Court stated, "a defendant may appeal an adverse decision on a postjudgment motion or petition if it affects his substantial rights, even if someone else brought the original motion." (*Id*. at p. 1165.) Our Supreme Court concluded that the trial court's denial of the recommendation affected Loper's substantial rights because "[b]y providing a mechanism for releasing eligible prisoners from custody, [former] section 1170(e) implicates a prisoner's substantial interest in personal liberty"

and because the statute "establishe[d] clear eligibility criteria [citation], suggesting that discretion is not unfettered when evidence is presented satisfying the statutory criteria." (*Id.* at p. 1161, fn. 3.)

Loper is distinguishable because there, the trial court was required to consider whether to recall the defendant's sentence in response to a recommendation by the Secretary of the Department of Corrections and Rehabilitation. Under section 1170, former subdivision (e)(3): "Within 10 days of receipt of a positive recommendation by the secretary or the board, the court *shall* hold a hearing to consider whether the prisoner's sentence should be recalled." (Italics added.) (Stats. 2014, ch. 26, § 17, subd. (e)(3); see *Teal*, *supra*, 60 Cal.4th at p. 600 [the trial court's determination that petitioner was ineligible for resentencing under section 1170.126 was appealable where the trial court was required to determine petitioner's eligibility for resentencing upon filing of the petition].) In the instant case, by contrast, section 1172.1, subdivision (c), expressly states "the court is not required to respond" to a defendant's request for resentencing, and the statute provides no eligibility criteria similar to that in *Loper*. Thus, *Loper* does not control here.

In addition, defendant cites *People v. Carmony* (2004) 33 Cal.4th 367 (*Carmony*) to assert that a trial court's decision to deny his section 1172.1 request is appealable. We conclude that *Carmony* does not support his argument.

Carmony involved a trial court's denial of a motion to dismiss prior strikes pursuant to section 1385. (*Carmony*, *supra*, 33 Cal.4th at p. 371.) Under section 1385,

subdivision (a), a trial court "may, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed." Carmony moved to dismiss two prior strike convictions under section 1385, but based on his record, the trial court concluded Carmony fell within the spirit of the Three Strikes law and declined to dismiss the strikes. (*Carmony*, at p. 373.)

The California Supreme Court concluded that the trial court's decision not to strike prior conviction allegations should be reviewed under the abuse of discretion standard. (*Carmony*, *supra*, 33 Cal.4th at p. 371.) Our Supreme Court rejected the "faulty" reasoning of a prior Court of Appeal decision "to the extent it holds that appellate courts lack authority to review a trial 'court's informed decision' not to 'exercise its section 1385 power in the furtherance of justice.' [Citation.]" (*Id.* at p. 375.) Our Supreme Court held: "A defendant has no right to make a motion, and the trial court has no obligation to make a ruling, under section 1385. But he or she does have the right to 'invite the court to exercise its power by an application to strike a count or allegation of an accusatory pleading, and the court must consider evidence offered by the defendant in support of his assertion that the dismissal would be in furtherance of justice.' [Citation.]" (*Ibid*.) Noting that the prosecution has the power to appeal a trial court's decision to dismiss a strike, the court concluded that "as a matter of logic and fairness, the defendant should have the concomitant power to appeal a court's decision not to dismiss a prior under section 1385 even though he or she cannot make a motion to dismiss." (*Id.* at p. 376.)

Carmony does not apply to the instant situation. Carmony had a statutory right to appeal from a final judgment of conviction under section 1237, subdivision (a). Accordingly, the *Carmony* court had no occasion to consider whether the trial court's decision affected Carmony's substantial rights under section 1237, subdivision (b), because the decision was not an "order made after judgment." The opinion in *Carmony* dealt with the applicable standard of review regarding a trial court's denial of a motion to dismiss prior strike allegations, not the appealability of such a ruling. "It is axiomatic that cases are not authority for propositions not considered. [Citations.]" (*People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10.)

We note section 1172.1 states that the trial court must advise a defendant of the right to appeal only "[a]fter ruling on a referral authorized by this section . . . ." (*Id.*, subd. (d).) Defendant's section 1172.1 request was not a "referral authorized by this section," and the trial court did not rule on any such referral. "A defendant's request for resentencing is therefore clearly not 'authorized by this section.' (§ 1172.1, subd. (d).) The absence of any obligation by the trial court to advise the defendant of a right to appeal the denial of the defendant's unauthorized request for resentencing strongly suggests that the Legislature did not intend to create such a right." (*Hodge*, *supra*, 107 Cal.App.5th at p. 999, fn. omitted.)

The trial court received defendant's request for resentencing but denied it consistent with its authority under section 1172.1, subdivision (c). Nothing that the court said or did transformed its denial of defendant's self-initiated request into an appealable

order. (See *Faustinos*, *supra*, 109 Cal.App.5th at p. 698.) Simply, defendant had no right to seek recall and resentencing, and the trial court had no power to recall and resentence on its own motion. We see nothing in the record showing that the nature and claim of the trial court's order affected defendant's substantial rights under section 1237, subdivision (b). Accordingly, we will dismiss the appeal.

IV.

DISPOSITION

The appeal is dismissed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

FIELDS
J.