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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. CHARLES EUGENE VACA, Defendant and Appellant.	B341297 (Los Angeles County Super. Ct. No. YA092788)

APPEAL from an order of the Superior Court of Los Angeles County, Alan B. Honeycutt, Judge. Affirmed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Wyatt E. Bloomfield and Seth P. McCutcheon, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Charles Vaca appeals from an order resentencing him following a successful Penal Code section 1172.75 petition.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, standard 8.1.

In 2017, a jury found Vaca guilty of two counts of first degree burglary (§ 459). The court sentenced him to 74 years to life in prison, which included sentencing enhancements. The enhancements relate to his criminal history, which spans over 40 years and includes, inter alia, felony convictions for first and second degree burglary, escape from jail, vandalism, and possession, sale, or manufacturing of dangerous weapons.

In 2024, Vaca filed a section 1172.75 petition asking the court to dismiss the now "legally invalid" section 667.5 prior prison term enhancements and resentence him. (§ 1172.5, subd. (a).) Vaca further asked that, at resentencing, the court exercise its discretion to strike all remaining enhancements because he is disabled and unlikely to reoffend. Vaca offered evidence establishing he is "wheelchair bound," "legally blind," "requires [a] 24 hour [supply of] oxygen," and "[does not] have the physical capability to do anything on his own." An expert opined based on Vaca's physical condition and his "behavior during incarceration" that he "does not pose a threat to public safety if released from prison."

The court struck Vaca's invalid section 667.5 enhancements and exercised its discretion to dismiss one of his two prior strikes. It resentenced him to a total of 29 years and four months in prison, consisting of the middle term sentence on count one (four years), one-third of the middle term on count two (eight months), 10 years

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

for the two section 667, subdivision (a) prior serious felony enhancements the court declined to strike, and the court doubling all of these components under section 1170.12, subdivision (c)(1).

The court explained it was reducing Vaca's original sentence by a significant amount—over 40 years—because of Vaca's age (71 years), "health condition[ ]," and the low risk that he would reoffend. It also, however, described Vaca as a "career criminal" who "has made a life of . . . victimizing people," and still deserved a "substantial, substantial [*sic*] sentence based upon his life of crime, the life that he's chosen, and the decisions that he's made."

DISCUSSION

On appeal, Vaca argues the court abused its discretion by declining to strike additional enhancements when it resentenced him.[2] We disagree.

Section 1172.75 requires a court to—as the court did here—strike a petitioning defendant's invalid section 667.5 prior prison term enhancements and recall the defendant's sentence. (§ 1172.75, subd. (c).) It further requires the court to resentence the defendant under current law, including any laws "that reduce sentences or provide for judicial discretion." (§ 1172.75, subd. (d)(2); see also *id.*, subd. (d)(1).) One such law, section 1385, requires a court to "dismiss an[y additional] enhancement[s]" if the court deems it "in

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[2] Respondent the People argue Vaca forfeited this argument by failing to object below. We disagree. Vaca argued below that the court should impose an eight-year sentence, citing his low risk of recidivism and health condition. This was sufficient to preserve his argument for appeal. We also disagree with the People that Vaca has so completely failed to "argue or support his position" on appeal that he has forfeited it.

the furtherance of justice to do so." (§ 1385, subd. (c)(1); see also *id.*, subd. (b).)

To "guide the court's discretion in determining whether a dismissal is in furtherance of justice" (*People v. Mazur* (2023) 97 Cal.App.5th 438, 445 (*Mazur*)), section 1385 identifies nine "mitigating circumstances" (§ 1385, subd. (c)(2)(A)-(I)). Although Vaca does not so argue, we conclude at least one of these is present: "[t]he application of [the] enhancement[s] could result in a sentence of over 20 years." (§ 1385, subd. (c)(2)(C); see *id.*, subd. (c)(2)(B) ["[m]ultiple enhancements are alleged in a single case"].) The presence of this mitigating factor "weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety." (§ 1385, subd. (c)(2).)

Vaca's sole argument is that he does not endanger public safety. We do not disagree. But this means only that the court was required to give "great weight" (§ 1385, subd. (c)(2)) to any statutorily enumerated mitigating circumstance because "an exception to th[is] requirement" does not apply. (*Mazur, supra*, 97 Cal.App.5th at p. 446.) A lack of public safety concerns is not itself a mitigating factor under section 1385. (*Mazur, supra*, at p. 446.) Nor does public safety—or any single factor—alone determine how a court may exercise its section 1385 discretion. (*Mazur, supra*, at p. 446.) Rather, the "broader" " 'furtherance of justice' standard" is "controlling" and "allows the court to consider factors beyond public safety," "including the nature and circumstances of the crimes and the defendant's background, character, and prospects." (*Ibid.*, citing *People v. Williams* (1998) 17 Cal.4th 148, 161 [applying " 'furtherance of justice' " standard for dismissal of strike prior under section 1385, subdivision (a)]; see *Mazur, supra*, at

pp. 445-446 [the statute "only requires the court to dismiss the enhancement if it first finds that dismissal is 'in the furtherance of justice,' " even for mitigating factors that include "mandatory language"]; see also § 1385, subd. (c)(4) [statutorily enumerated factors "are not exclusive and the court maintains authority" to determine what is in furtherance of justice].)

The court agreed with Vaca—as do we—that the evidence establishes he does not endanger society. Section 1385 therefore required the court to consider, as a factor weighing heavily in favor of striking Vaca's prior serious felony enhancements, the possibility that the enhancements could result in a sentence exceeding 20 years. The record does not suggest, however, that the court failed to do this. Rather, it reflects the court considered numerous factors—including the only factor Vaca now identifies as a basis for the relief he seeks—and opted not to strike the enhancements, but still substantially reduced Vaca's original sentence. We see no abuse of discretion in the court's implicit finding that it would not be in furtherance of justice to reduce the sentence even further.

Nor do we deem it significant that the court did not expressly identify the mitigating circumstances present or explain its reasoning in a manner tracking the section 1385 analytical framework. "[T]he record shows that the trial court was aware that it could strike the . . . enhancement[s], but chose not to do so because it was" so substantially reducing the sentence in other ways. (*People v. Barber* (2020) 55 Cal. App. 5th 787, 814; see *ibid.* [no abuse of discretion under section 1385 where "the record show[ed] that the trial court was aware that it could strike the great bodily enhancement, but chose not to do so because it was granting probation"].) "In considering the entire record,

the court . . . tried to strike a balance between holding [Vaca] responsible" for his crimes and the implications of his current health condition. (*Barber*, *supra*, at p. 814.) By refusing to strike the enhancements, but still reducing the sentence by over 40 years, the court apparently "believed it struck the proper balance. Moreover, to the extent the record is ambiguous, the court is presumed to have properly performed its official functions in the absence of evidence to the contrary." (*Ibid.*)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

M. KIM, J.