

Exhibit A

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

THYPOCHUS A. HUGGINS,

Defendant and Appellant.

C086939

(Super. Ct. No. 17FE008641)

Defendant Thyochus A. Huggins burglarized the home of N.G. and S.G. After a jury trial, the jury found him guilty of one count of first degree residential burglary (Pen. Code, § 459;¹ count one); two misdemeanor counts of shoplifting (§ 459.5; counts two & three); and one felony count of receiving stolen property (§ 496, subd. (a); count four). In a bifurcated bench trial, the trial court found true the allegations that defendant had been convicted of a strike prior and two prior serious felonies. The court sentenced

¹ Further undesignated statutory references are to the Penal Code.

defendant to a total of 22 years in state prison, comprised of the upper term of six years on count one, doubled to 12 years based on the prior strike offense, plus two consecutive five-year enhancements for the prior serious felony convictions. The court also ordered defendant to pay restitution to N.G. and S.G. in the amount of \$9,100.

On appeal, defendant argues that (1) the judgment must be reversed because the trial court, in responding to a request for reappointment of counsel, preemptively denied any future request to renew his right of self-representation under *Faretta v. California* (1975) 422 U.S. 806 [45 L.Ed.2d 562] (*Faretta*); and (2) the restitution award must be reversed because his counsel was ineffective in failing to object to the amount of restitution or request a restitution hearing to contest the amount of the award. Defendant also argues that in light of Senate Bill No. 1393 (2017-2018 Reg. Sess.; Stats. 2018, ch. 1013, §§ 1, 2, eff. Jan. 1, 2019) (Senate Bill 1393), this case must be remanded to allow the trial court to exercise its newly enacted discretion to strike one or both of the five-year prior serious felony enhancements.

Although we reject defendant's *Faretta* and ineffective assistance claims, we agree that the case must be remanded to permit the court to exercise its discretion under Senate Bill 1393, to pronounce a sentence under count four, and to correct a clerical error in the abstract of judgment. We otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant burglarized the home of N.G. and S.G., stealing various items of value. He then went on a shopping spree using S.G.'s stolen credit cards to purchase or attempt to purchase items from stores in the area. By viewing store surveillance videos, N.G.'s nephew was able to identify defendant's vehicle and license plate number. Two days later, the nephew saw defendant's vehicle parked at a shopping center. The nephew called the police and defendant was arrested. In defendant's car, officers found several items of property belonging to N.G. and S.G., including health insurance cards, bank

cards, checks, credit cards, watches, jewelry, and a jewelry box. Other items stolen from N.G. and S.G. were not recovered.

An amended information was filed charging defendant with one count of first degree residential burglary; two misdemeanor counts of shoplifting; and one felony count of receiving stolen property. The amended information also alleged three strike priors (§§ 667, subd. (e)(2), 1170.12, subd. (c)(2)), two prior serious felony conviction enhancements (§ 667, subd. (a)), and two prior prison term enhancements (§ 667.5, subd. (b)).

On October 3, 2017, at a pretrial competency hearing, defendant made a *Faretta* motion to discharge his attorney and represent himself. The court conducted an inquiry into defendant's request, which suggested that defendant is an adherent of the "sovereign citizen" movement. Though the precise contours of the philosophy differ among the various groups, sovereign citizens generally believe that so long as they preserve their sovereign status, they do not have to answer to any government authority. (*Severson & Werson, P.C. v. Sepehry-Fard* (2019) 37 Cal.App.5th 938, 943; *United States v. Mitchell* (D.Md. 2005) 405 F.Supp.2d 602, 605-606; *Gravatt v. United States* (Fed.Cl. 2011) 100 Fed.Cl. 279, 282 & fn. 1.) Although the sovereign citizen defense has " 'no conceivable validity in American law' " (*United States v. Jonassen* (7th Cir. 2014) 759 F.3d 653, 657, fn. 2), it appears that defendant wanted to advance a sovereign citizen defense to contest the court's jurisdiction. When his appointed counsel refused to follow his demands, defendant sought to proceed pro se. (See, e.g., *Jonassen, supra*, 759 F.3d at p. 657; see also *United States v. Schneider* (7th Cir. 1990) 910 F.2d 1569, 1570.)

After conducting an inquiry into defendant's request, the trial court denied defendant's motion for self-representation, concluding that defendant was not able or willing to abide by the rules of procedure and courtroom decorum. At his next court appearance on October 12, before a different judge, defendant renewed his *Faretta* motion. This time the court granted the motion.

Defendant did not represent himself for long. On November 22, 2017, five days before his scheduled trial date, defendant requested reappointment of counsel. The court granted the motion. Before doing so, the court warned defendant about his vacillating requests for counsel and self-representation. The court told defendant that he would not be allowed to “pick and choose” when he was going to represent himself. The court informed defendant that if it granted his motion for reappointment of counsel, defendant would be “represented by an attorney from this point on,” and that the court was “not going to appoint an attorney[] a month or two down the road [if] you decide you want to represent yourself.”

Defendant confirmed he wanted counsel, but insisted this would not prevent him from again seeking self-representation if his appointed counsel failed to comply with his demands. Defendant told the court, “[I]f my attorney fails to do his job, I’m going to . . . ask him to file a waiver to say he doesn’t want to represent me, and . . . [a] Judge is going to have to answer that” He went on to say: “I understand that I have a constitutional right to have representation. I also know that I have a right to represent myself as well.”

The court responded that if counsel is reappointed, defendant would not be able to represent himself again, stating, “If I give you an attorney, you will have an attorney from this point on to represent you. [¶] I won’t let you discharge the attorney. [¶] If you are having a conflict with that attorney . . . , you [may] have another attorney appointed in their place, but you will not be allowed to represent yourself again because you are choosing an attorney to represent you rather than represent yourself.” The court reappointed counsel and continued defendant’s trial date.

In early February 2018, shortly before the continued trial date, defendant moved under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) to discharge his court appointed attorney and appoint substitute counsel. The court denied the motion. At his *Marsden* hearing, defendant never asked to represent himself; in fact, he made it clear that he wanted counsel, he simply wanted a different lawyer.

Defendant did not make another *Marsden* or *Faretta* motion and his case proceeded to trial on February 21, 2018. The jury found defendant guilty on all counts. In a bifurcated bench trial, the court found true the allegations related to the enhancements.

At sentencing, with the agreement of the parties, the court ordered that defendant's case would be sentenced as a two-strike case.² The court sentenced defendant to a total of 22 years in state prison. The court sentenced defendant to the upper term of six years on count one (burglary), doubled to 12 years based on defendant's prior strike history. (§ 667, subd. (e)(1), 1170.12, subd. (c)(1).) The court determined that aggravating circumstances justified the upper term because defendant had a lengthy criminal history with prior convictions of increasing seriousness (Cal. Rules of Court, rule 4.421(b)(2);³ defendant had served prior prison terms (rule 4.421(b)(3); defendant's prior performance on probation and parole was unsatisfactory (rule 4.421(b)(5); and defendant was on parole when the crime was committed (rule 4.421(b)(4). The court also cited the nature of the current crime, which indicated a level of planning, sophistication, or professionalism (rule 4.421(a)(8)).

The court imposed two 30-day sentences on counts two and three (shoplifting) to run concurrently with his prison term. The court stayed the imposition of sentence on count four (receiving stolen property) pursuant to section 654. The court imposed two consecutive five-year enhancements for defendant's two prior serious felony convictions under section 667, subdivision (a). It also imposed, but stayed, two one-year prior prison term enhancements under section 667.5, subdivision (b). Defendant filed a timely notice of appeal.

² The court dismissed the strike portion of prior conviction No. 2 and the entirety of prior conviction No. 3.

³ Further undesignated rule references are to the California Rules of Court.

DISCUSSION

I

Faretta Motion

Defendant contends the judgment must be reversed because he was denied his Sixth Amendment right to represent himself. The record belies his contention.

A defendant in a criminal case possesses two mutually exclusive constitutional rights with respect to representation: the right to be represented by counsel at all critical stages of a criminal prosecution and the Sixth Amendment right to self-representation. (*People v. Marshall* (1997) 15 Cal.4th 1, 20 (*Marshall*).) The right to counsel is self-executing. (*Id.* at p. 20.) “The right to counsel persists unless the defendant affirmatively waives that right. [Citation.] Courts must indulge every reasonable inference against waiver of the right to counsel. [Citation.]” (*Ibid.*) Thus, courts will deny a motion for self-representation if the defendant’s words or conduct reflect ambiguity or ambivalence about the defendant’s desire to proceed pro se. (*Id.* at p. 23; *People v. Stanley* (2006) 39 Cal.4th 913, 932.)

Courts do not extend the same kind of protection to the right of self-representation. (*Marshall, supra*, 15 Cal.4th at p. 20.) Unlike the right to be represented by counsel, the right of self-representation is not self-executing and can be waived or abandoned if the defendant fails to invoke it. (*Id.* at pp. 20-21; accord, *People v. Butler* (2009) 47 Cal.4th 814, 825 [“It is settled that the *Faretta* right may be waived by failure to make a timely request to act as one’s own counsel [citation], or by abandonment and acquiescence in representation by counsel [citations];” *People v. Trujeque* (2015) 61 Cal.4th 227, 264 [“Based on the circumstance that defendant accepted . . . counsel and that he did not renew his request for self-representation, ‘we conclude he must further be found to have ultimately abandoned his desire to invoke his *Faretta* rights in these capital murder proceedings.’ ”]; *People v. Stanley, supra*, 39 Cal.4th at p. 933; see also *People v. Weeks* (2008) 165 Cal.App.4th 882, 887-890.)

To invoke the constitutional right to self-representation under *Faretta*, three requirements must be met. First, the defendant must be mentally competent and make his request knowingly and intelligently, having been apprised of the dangers of self-representation. (*People v. Jackson* (2009) 45 Cal.4th 662, 689.) Second, the defendant must unequivocally assert his or her right of self-representation. (*Ibid.*) Third, the defendant must make the request for self-representation within a reasonable time before trial. (*Ibid.*) Once trial has commenced, demands for self-representation are addressed to the sound discretion of the court. (*Ibid.*; *People v. Barnett* (1998) 17 Cal.4th 1044, 1104-1105; *People v. Bloom* (1989) 48 Cal.3d 1194, 1220 [once trial has commenced, the right to self-representation is no longer based on the Constitution]; *People v. Rivers* (1993) 20 Cal.App.4th 1040, 1050 [same].)

Where a defendant makes a timely, intelligent, and unequivocal request for self-representation, *Faretta* requires the court to grant the motion. (*People v. Bloom, supra*, 48 Cal.3d at p. 1219; *People v. Windham* (1977) 19 Cal.3d 121, 128.) Failure to grant a properly made *Faretta* motion is structural error that requires reversal of the judgment without an assessment of prejudice. (*People v. Joseph* (1983) 34 Cal.3d 936, 947-948; *People v. Boyce* (2014) 59 Cal.4th 672, 702; but see *People v. Rogers* (1995) 37 Cal.App.4th 1053, 1058 [denial of an untimely *Faretta* motion reviewed under the harmless error test].)

Here, defendant does not contend that the trial court erroneously denied a timely, intelligent, and unequivocal request for self-representation. It is undisputed that after the trial court granted defendant's request for reappointment of counsel, defendant never again asked to represent himself (or otherwise reasserted his *Faretta* right) and his case proceeded to trial. Nevertheless, relying on *People v. Dent* (2003) 30 Cal.4th 213 (*Dent*), defendant argues that the trial court violated *Faretta* by preemptively denying his Sixth Amendment right to represent himself in the future should he so choose. We find defendant's reliance on *Dent* misplaced.

In *Dent*, when the trial court proposed to replace the defendant's appointed counsel due to inattentiveness, the defendant objected and told the court that he would prefer to represent himself. (*Dent, supra*, 30 Cal.4th at pp. 216-217.) The trial court denied the defendant's request to proceed pro se out of hand, telling the defendant that it would not let him represent himself in a death penalty case. (*Id.* at pp. 217, 220.)

On appeal, the Supreme Court agreed with the defendant that the trial court had denied his *Faretta* request on an improper basis, i.e., because it was a death penalty murder trial. (*Dent, supra*, 30 Cal.4th at p. 218.) The People argued, however, that the trial court nevertheless properly denied the request because it was equivocal. (*Id.* at pp. 218-219.) The court was not persuaded, characterizing the defendant's request as conditional, rather than equivocal. (*Id.* at p. 219.) In any event, the court held that it was unnecessary to decide whether the defendant's request was equivocal because the trial court's ruling effectively prevented the defendant from making a less equivocal request. (*Id.* at p. 219.) By foreclosing any realistic possibility that the defendant would perceive self-representation as an available option, the trial court interfered with the defendant's *Faretta* right. (*Ibid.*) Under these circumstances, the court found it "less probative than in other cases that defendant failed to renew his [*Faretta*] motion upon meeting his new counsel." (*Id.* at p. 220.)

The Supreme Court distinguished *Dent* in two subsequent cases: *People v. Lancaster* (2007) 41 Cal.4th 50 (*Lancaster*) and *People v. Gomez* (2018) 6 Cal.5th 243 (*Gomez*).

In *Lancaster*, after the defendant twice invoked and abandoned his *Faretta* right, the trial court warned the defendant that he could not keep vacillating and that it needed to be a " 'permanent decision.' " (*Lancaster, supra*, 41 Cal.4th at p. 69.) The trial court told the defendant that if in the future he again sought to proceed in propria persona, the decision " 'probably would not be in [his] favor.' " (*Ibid.*)

Relying on *Dent*, the defendant argued on appeal that the trial court's comments to him operated as a " 'preemptive denial' " of his *Faretta* right of self-representation. (*Lancaster, supra*, 41 Cal.4th at p. 69.) The Supreme Court disagreed. The court noted that, unlike *Dent*, the trial court had not denied any pending *Faretta* request; the court merely advised the defendant that he could not continue to alternate between representing himself and being represented by counsel. (*Id.* at pp. 69-70.) The court construed the trial court's warning to the defendant as an "understandable" attempt to discourage the defendant from abusing his *Faretta* right. (*Id.* at p. 70.) It also held that "[w]hile the [trial] court should not have warned defendant that he needed to make 'a permanent decision' . . . , the impropriety was slight and caused neither fundamental nor prejudicial error." (*Ibid.*)

The Supreme Court further distinguished *Dent* in *Gomez, supra*, 6 Cal.5th 243. In *Gomez*, the defendant invoked his *Faretta* right approximately nine months before trial. (*Id.* at pp. 268-269.) In granting the request, the trial court warned the defendant about switching back and forth between representing himself and being represented by counsel. (*Id.* at p. 269.) Notwithstanding the court's warning, about two weeks later, the defendant sought to abandon his pro se status and asked the court to reappoint counsel. (*Ibid.*) The trial court granted the request, but before doing so, it reminded the defendant that he would not be allowed to switch back and forth and told the defendant that if counsel was reappointed, it would be the " 'final change.' " (*Ibid.*)

Although the defendant never reinvoked his *Faretta* right, he argued on appeal that the trial court nevertheless violated *Faretta* by preemptively denying his right to self-representation. (*Gomez, supra*, 6 Cal.5th at p. 269.) The Supreme Court disagreed. (*Id.* at p. 271.) The court distinguished *Dent* because it involved an outright denial, whereas in *Gomez*, as in *Lancaster*, the defendant had vacillated between self-representation and the right to counsel. (*Gomez*, at pp. 270-271.) Recognizing the difficulties posed by a defendant's intermittent assumption of his own defense, the court held that trial courts are

“not foreclosed from preemptively discouraging such requests when it identifies a pattern of vacillation that, over time, will harm the progress of trial and the defendant’s ability to put on a defense.”⁴ (*Id.* at pp. 271-272.) Thus, considered in context, the trial court’s statement that “ ‘this is a final change’ ” was held not to violate *Faretta*. (*Gomez*, at pp. 271-272.)

This case is more closely analogous to *Lancaster* and *Gomez* than *Dent*. As in *Lancaster* and *Gomez*, defendant’s request for self-representation was granted before defendant changed his mind and requested reappointment of counsel five days before trial. Confronted with defendant’s vacillation between self-representation and representation by counsel, and with trial looming, the trial court told defendant that if it granted his request to reappoint counsel, defendant would not be allowed to return to self-representation. The court subsequently granted defendant’s request for reappointment of counsel and continued the trial date.

Although some of the trial court’s comments to defendant may have been “precipitous” (*Lancaster, supra*, 41 Cal.4th at p. 69), the record shows that defendant understood that he had a constitutional right to self-representation should his appointed counsel fail to accede to his demands. As it turns out, defendant grew unhappy with his appointed counsel, but rather than seek a return to self-representation, he filed a *Marsden* motion, which was heard shortly before the continued trial date. At the hearing, defendant made clear that he wanted to be represented by counsel at trial—he simply wanted a different lawyer.

⁴ The court also rejected an argument that *Lancaster* would have been decided differently if the trial court’s comments in that case had “been phrased in more certain terms.” (*Gomez, supra*, 6 Cal.5th at p. 271.) The court held that the import of *Lancaster* does not turn on such “subtle distinctions in wording.” (*Gomez*, at p. 271.)

By failing to renew his request for self-representation and acquiescing to representation by counsel through trial, defendant implicitly abandoned his right of self-representation. Regardless, we conclude that the reasoning of *Lancaster* and *Gomez* is controlling. Nothing in the record gives any indication that defendant's decision to accept and retain attorney representation was influenced by anything the court said or did. To the contrary, the record portrays defendant as articulate, assertive, and intelligent. He knew his rights and was not shy about asserting them. Further, the trial court did not deny any pending *Faretta* request; it merely advised defendant that with trial fast approaching, he could not continue to alternate between representing himself and being represented by counsel. We therefore conclude there was no *Faretta* violation.

II

Ineffective Assistance of Counsel

Defendant argues that he received ineffective assistance of counsel because his lawyer failed to object to the amount of victim restitution ordered or to request a restitution hearing. We disagree.

A. *Additional background*

Before sentencing, the probation officer recommended the court order defendant pay \$9,100 in victim restitution to N.G. and S.G. This amount was based on a restitution claim form submitted by N.G. In the claim form, N.G. estimated that he lost 12 gold necklaces, seven gold rings, one purse, and one wallet. N.G. estimated the lost items cost about \$9,100 to purchase.

At trial, N.G. testified that the items stolen from him and not recovered included six gold necklaces, four gold rings, two purses, one wallet, and various (unidentified) pieces of inexpensive jewelry. N.G. estimated the value of such items as "probably" between \$7,000 and \$8,000.

At sentencing, the trial court ordered defendant to pay victim restitution to N.G. and S.G. in the amount of \$9,100. Defendant's counsel did not object.

B. *Analysis*

Defendant recognizes that his failure to object forfeited any direct challenge to the restitution order, so he instead argues that his counsel's failure to object constituted ineffective assistance of counsel.

To establish ineffective assistance, a defendant must show (1) counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance prejudiced the defendant. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216-218; *Strickland v. Washington* (1984) 466 U.S. 668, 687-692 [80 L.Ed.2d 674, 693-696].)

In measuring counsel's performance, judicial review is highly deferential. (*Strickland v. Washington, supra*, 466 U.S. at p. 689; *In re Andrews* (2002) 28 Cal.4th 1234, 1253.) There is a presumption that counsel acted within the wide range of reasonable professional assistance. (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) When, as here, the strategic reasons for challenged decisions are not apparent from the record, we will not find ineffective assistance of counsel unless there could have been "no conceivable tactical purpose" for counsel's acts or omissions. (*People v. Earp* (1999) 20 Cal.4th 826, 896; see also *People v. Arce* (2014) 226 Cal.App.4th 924, 930-931.)

In this case, we can conceive of a rational tactical reason for failing to object to the amount of restitution recommended in the probation report. Counsel could have concluded that the amount of restitution ordered was favorable to defendant, and that requesting a restitution hearing might lead to a higher award. Thus, we disagree with defendant that there is no conceivable tactical reason for trial counsel's failure to object.

In any event, it is not enough for defendant merely to assert that his counsel should have requested a hearing on restitution. Defendant must show that he was prejudiced by his counsel's conduct. (*People v. Ledesma, supra*, 43 Cal.3d at p. 217.) In other words, he must show that, but for his counsel's conduct in failing to request a restitution hearing, it is reasonably probable that the court would have ordered a lesser amount of restitution.

(*People v. Foster* (1993) 14 Cal.App.4th 939, 943-948, superseded by statute on other grounds as stated in *People v. Sexton* (1995) 33 Cal.App.4th 64, 70.) Defendant has not met this burden; he offers nothing more than speculation based on an apparent discrepancy between N.G.'s written claim and trial testimony that the award might have been lower.

Because defendant has shown neither deficient performance, nor prejudice, we reject his claim of ineffective assistance.

III

Senate Bill 1393

Under the law in effect at the time of defendant's sentencing, the trial court had no authority to strike a prior serious felony conviction for purposes of the five-year enhancement of a sentence under section 667, subdivision (a)(1). (Former §§ 667, subd. (a)(1) & 1385, subd. (b).) Senate Bill 1393 (2017-2018 Reg. Sess.), which went into effect during the pendency of this appeal, amended the law to permit a trial court to strike a five-year serious felony prior. (§§ 667, subd. (a)(1), 1385, subd. (b).) Defendant argues that the amendment applies retroactively to this case and, as a result, we must remand this matter to the trial court to allow it to exercise its discretion whether to strike the five-year prior serious felony enhancements.

The People concede that Senate Bill 1393 applies retroactively to defendant's case. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973; *People v. Jones* (2019) 32 Cal.App.5th 267, 272.) The People argue, however, that remand to the trial court is not necessary because the trial court clearly indicated that it would not have stricken the enhancements even if it had the discretion.

Where a trial court is unaware of its sentencing discretion, remand is required unless "the record reveals a clear indication that the trial court would not have reduced the sentence even if at the time of sentencing it had the discretion to do so." (*People v.*

Almanza (2018) 24 Cal.App.5th 1104, 1110; *People v. McDaniels* (2018) 22 Cal.App.5th 420, 426-427.)

Here, remand is proper because the record does not clearly indicate the trial court would have declined to strike defendant's prior serious felony convictions if it had the discretion to do so. The trial court made no express statements to that effect. Although the trial court elected to impose the upper term on the burglary charge, we do not construe this, by itself, as a clear indication of what the trial court would have done if it had been aware of the full extent of its discretion under Senate Bill 1393. (*People v. Almanza, supra*, 24 Cal.App.5th at pp. 1110-1111 ["speculation about what a trial court might do on remand is not 'clearly indicated' by considering only the original sentence"]; see also *People v. Jones, supra*, 32 Cal.App.5th at p. 274.) Defendant should have the opportunity to argue to the trial court that it should exercise its discretion to strike the prior serious felony enhancements. We therefore remand for this purpose.

IV

Errors in the Abstract of Judgment

In their brief, the People argue that the court clerk erred in preparing the abstract of judgment because the abstract fails to reflect the imposition and stay of the prior prison term enhancements under section 667.5, subdivision (b). We agree and therefore direct the trial court to correct the abstract of judgment accordingly. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

In addition, based on our review of the record, we have identified a sentencing error in the oral pronouncement of judgment, namely, that the trial court failed to impose a sentence on count four before staying execution of that count. (See *People v. Duff* (2010) 50 Cal.4th 787, 796; *People v. Alford* (2010) 180 Cal.App.4th 1463, 1469.) We will remand this matter to the trial court to impose sentence on that count and order execution of that sentence stayed under section 654. (*People v. Sanders* (2012) 55 Cal.4th 731, 743, fn. 13; *People v. Scott* (1994) 9 Cal.4th 331, 354 & fn. 17.)

DISPOSITION

We remand this matter to the trial court with directions to (1) impose sentence on count four and order execution of that sentence stayed under section 654, and (2) exercise its discretion under sections 667, subdivision (a)(1), and 1385, subdivision (b), as amended by Senate Bill 1393 (2017-2018 Reg. Sess.) and, if appropriate following the exercise of that discretion, resentence defendant accordingly. The trial court is additionally directed to correct the abstract of judgment to reflect the imposition and stay of the prior prison term enhancements under section 667.5, subdivision (b). We direct the trial court to prepare an amended abstract of judgment and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

KRAUSE, J.

We concur:

HULL, Acting P. J.

DUARTE, J.

Exhibit B

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

THYPOCHUS A. HUGGINS,

Defendant and Appellant.

C086939

(Super. Ct. No. 17FE008641)

ORDER DENYING
REQUEST TO VACATE
OPINION AND
SUBMISSION OF THE
CAUSE
&
ORDER MODIFYING
OPINION
[CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the request to vacate opinion and submission of the cause filed on January 31, 2020, be denied.

It is ordered that the opinion filed on January 24, 2020, be modified as follows:

1. In the first paragraph of the opinion that begins on page one and ends on page two, insert the following sentence prior to the last sentence of the paragraph:

The court imposed, but stayed, two one-year prior prison term enhancements under section 667.5, subdivision (b).

2. Delete the second full paragraph on page two and replace it with the following paragraph:

Although we reject defendant's *Faretta* and ineffective assistance claims, we agree that the case must be remanded to permit the court to exercise its discretion under Senate Bill 1393 and to pronounce a sentence under count four. We also conclude that under Senate Bill No. 136 (2019-2020 Reg. Sess.; Stats. 2019, ch. 590, § 1) (Senate Bill 136), effective January 1, 2020, defendant no longer qualifies for the prior prison term enhancements imposed under section 667.5, subdivision (b). Accordingly, we will direct the trial court to strike those enhancements. We otherwise affirm the judgment.

3. On page 14, delete the first full paragraph in part IV and replace it with the following paragraphs:

In their brief, the People argue that the court clerk erred in preparing the abstract of judgment because the abstract fails to reflect the imposition and stay of the prior prison term enhancements under section 667.5, subdivision (b). We conclude that Senate Bill 136 (2019-2020 Reg. Sess.), which amended section 667.5, subdivision (b), retroactively applies to defendant, and therefore the prior prison term enhancements must be stricken.

Effective January 1, 2020, Senate Bill 136 amended section 667.5, subdivision (b) to limit the circumstances under which a one-year prior prison term enhancement may be

imposed. (Stats. 2019, ch. 590, § 1.) Under the new law, a trial court may impose the one-year enhancement only when the prior prison term was served for a sexually violent offense as defined in Welfare and Institutions Code section 6600, subdivision (b). (Stats. 2019, ch. 590, § 1.) Defendant's prison priors were not served for sexually violent offenses and therefore do not qualify as enhancements under amended section 667.5, subdivision (b).

Amended section 667.5, subdivision (b) applies retroactively to defendant because his judgment was not final on the amended statute's effective date. (*People v. Jennings* (2019) 42 Cal.App.5th 664, 681; *People v. Smith* (2015) 234 Cal.App.4th 1460, 1465-1466.) Accordingly, defendant's two one-year prior prison term enhancements must be stricken.

4. On page 15, delete the paragraph under the heading "DISPOSITION" and replace it with the following paragraph:

We remand this matter to the trial court with directions to (1) strike the two one-year prior prison term enhancements imposed under section 667.5, subdivision (b), (2) impose sentence on count four and order execution of that sentence stayed under section 654, and (3) exercise its discretion under sections 667, subdivision (a)(1), and 1385, subdivision (b), as amended by Senate Bill 1393 (2017-2018 Reg. Sess.) and, if appropriate following the exercise of that discretion, resentence defendant accordingly. We direct the trial court to prepare an amended abstract of judgment and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

This modification changes the judgment. (See Cal. Rules of Court, rule 8.264(c)(2).)

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Hull", written above a horizontal line.

Hull, Acting P. J.

A handwritten signature in cursive script, appearing to read "Duarte", written above a horizontal line.

Duarte, J.

A handwritten signature in cursive script, appearing to read "Krause", written above a horizontal line.

Krause, J.

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

MAILING LIST

Re: The People v. Huggins
C086939
Sacramento County
No. 17FE008641

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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✓ Honorable Gerrit W. Wood
Judge of the Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814

F10321

FELONY ABSTRACT OF JUDGMENT—DETERMINATE
(NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED)

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO		FILED/ENDORSED APR 12 2018 By: E. BERNARDO DEPUTY CLERK	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: THYCHUS A. HUGGINS		DOB: 07/08/1982	17FE008641 -A
AKA:			-B
CII NO.: A11916872			-C
BOOKING NO.: XREF: 5113561 <input type="checkbox"/> NOT PRESENT			-D
FELONY ABSTRACT OF JUDGMENT <input checked="" type="checkbox"/> PRISON COMMITMENT <input type="checkbox"/> COUNTY JAIL COMMITMENT <input type="checkbox"/> AMENDED ABSTRACT			
DATE OF HEARING 04/12/2018	DEPT. NO. 31	JUDGE GERRIT WOOD	
CLERK T. BROWN	REPORTER D. COUGHLIN, 10418	PROBATION NO. OR PROBATION OFFICER A-508,589 <input type="checkbox"/> IMMEDIATE SENTENCING	
COUNSEL FOR PEOPLE KITTY CANALES, DDA		COUNSEL FOR DEFENDANT SUSANNAH MARTIN, APD <input checked="" type="checkbox"/> APPOINTED	

1. Defendant was convicted of the commission of the following felonies:

☐ Additional counts are listed on attachment
(number of pages attached)

COUNT	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YR.)	CONVICTED BY			TERM (L, M, U)	CONCURRENT	1/2 CONSECUTIVE	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (REFER TO MEMO)	654 STAY	SERIOUS FELONY	VIOLENT FELONY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	COURT	PLEA									YRS.	MOS.
1	PC	459*	1st Degree Residential Burg	2017	02 / 28 / 18	X			U			X			X		12	0
4	PC	496(a)	Buy/Receiv Stolen Property	2017	02 / 28 / 18	X			///					X				
					/ /													
					/ /													
					/ /													
					/ /													

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

COUNT	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL

3. ENHANCEMENTS charged and found to be true for PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed, "S" for stayed, or "PS" for punishment struck. DO NOT LIST ENHANCEMENTS FULLY STRICKEN by the court.

ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	ENHANCEMENT	TIME IMPOSED, "S," or "PS"	TOTAL
Prior #1: 667(a)PC	5 yrs	Prior #2: 667(a)PC	5 yrs			10 0

4. Defendant sentenced ☐ to county jail per 1170(h)(1) or (2)

☒ to prison per 1170(a), 1170.1(a) or 1170(h)(3) due to ☒ current or prior serious or violent felony ☐ PC 290.6 ☐ PC 186.11 enhancement
☒ per PC 667(b)-(i) or PC 1170.12 (strike prior)
☐ per PC 1170(a)(3). Preconfinement credits equal or exceed time imposed. ☐ Defendant ordered to report to local parole or probation office.

5. INCOMPLETE SENTENCE(S) CONSECUTIVE

COUNTY	CASE NUMBER

6. TOTAL TIME ON ATTACHED PAGES:

7. ☐ Additional Indeterminate term (see CR-292).

8. TOTAL TIME: 22 yrs 0 mos

Attachments may be used but must be referred to in this document.

PEOPLE OF THE STATE OF CALIFORNIA vs.
 DEFENDANT: **THYCHUS A. HUGGINS**

17FE008641

-A

-B

-C

-D

9. FINANCIAL OBLIGATIONS (plus any applicable penalty assessments):

a. Restitution Fines:

Case A: \$ 300.00 per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ 300.00 per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

Case B: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

Case C: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

Case D: \$ _____ per PC 1202.4(b) (forthwith per PC 2085.5 if prison commitment); \$ _____ per PC 1202.45 suspended unless parole is revoked.
 \$ _____ per PC 1202.44 is now due, probation having been revoked.

b. Restitution per PC 1202.4(f):

Case A: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case B: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case C: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

Case D: \$ _____ ☐ Amount to be determined to ☐ victim(s)* ☐ Restitution Fund

☒ *Victim name(s), if known, and amount breakdown in item 13, below. ☒ *Victim name(s) in probation officer's report.

c. Fines:

Case A: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$ _____ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case B: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$ _____ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case C: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$ _____ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

Case D: \$ _____ per PC 1202.5 \$ _____ per VC 23550 or _____ days ☐ county jail ☐ prison in lieu of fine ☐ concurrent ☐ consecutive
☐ includes: ☐ \$ _____ Lab Fee per HS 11372.5(a) ☐ \$ _____ Drug Program Fee per HS 11372.7(a) for each qualifying offense

d. Court Operations Assessment: \$ 160 per PC 1465.8. **e. Conviction Assessment:** \$ 120 per GC 70373. **f. Other:** \$ _____ per (specify): _____

10. TESTING: ☒ Compliance with PC 296 verified ☐ AIDS per PC 1202.1 ☐ other (specify): _____

11. REGISTRATION REQUIREMENT: ☐ per (specify code section): _____

12. ☐ MANDATORY SUPERVISION: Execution of a portion of the defendant's sentence is suspended and deemed a period of mandatory supervision under Penal Code section 1170(h)(5)(B) as follows (specify total sentence, portion suspended, and amount to be served forthwith):

Total: _____ Suspended: _____ Served forthwith: _____

13. Other orders (specify): Per Prob Officer's Rpt-Deft has no complied w/ Ct order purs 29810PC, however Deft has no reportable firearms per PO rpt

Victim Restitution: \$98.90 P&A Liquor; \$660.65 Wal-Mart Rancho Cordova; \$2.98 Eco Liquor; \$9,100.00 Nikolay & Svetlana G all purs 1202.4PC.

14. IMMEDIATE SENTENCING: ☐ Probation to prepare and submit a post-sentence report to CDCR per 1203c.
 Defendant's race/national origin: Black

15. EXECUTION OF SENTENCING IMPOSED

- a. ☒ at initial sentencing hearing
 b. ☐ at resentencing per decision on appeal
 c. ☐ after revocation of probation
 d. ☐ at resentencing per recall of commitment (PC 1170(d).)
 e. ☐ other (specify): _____

16. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	689 days	345days	344 days <input type="checkbox"/> 2933 <input checked="" type="checkbox"/> 2933.1 <input type="checkbox"/> 4019
B			<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input type="checkbox"/> 4019
C			<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input type="checkbox"/> 4019
D			<input type="checkbox"/> 2933 <input type="checkbox"/> 2933.1 <input type="checkbox"/> 4019
Date Sentence Pronounced		Time Served in State Institution	
04 12 2018		DMH CDC CRC	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

17. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
 To be delivered to ☐ the reception center designated by the director of the California Department of Corrections and Rehabilitation
☐ county jail ☒ other (specify): DVI

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE E. BERNARDO FOR T. Brown


DATE
 04/12/18



APR 2 6 2018

Appellate Courts Case Information

Supreme Court

Change court 

Court data last updated: 04/23/2020 10:45 AM

Docket (Register of Actions)

PEOPLE v. HUGGINS

Division SF

Case Number S261216

Date	Description	Notes
03/16/2020	Petition for review filed	Defendant and Appellant: Thyochus A. Huggins Attorney: Lindsay Sweet
03/16/2020	Record requested	Court of Appeal record imported and available electronically.
03/17/2020	Received:	Service copy of petition for review filed 3/16/2020 electronically.
03/18/2020	Received Court of Appeal record	One doghouse.
04/22/2020	Petition for review denied	

[Click here](#) to request automatic e-mail notifications about this case.

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT

THE PEOPLE,
Plaintiff and Respondent,
v.
THYPOCHUS A. HUGGINS,
Defendant and Appellant.

C086939
Sacramento County
No. 17FE008641

REMITTITUR TO TRIAL COURT CLERK

I, ANDREA K. WALLIN-ROHMANN, Clerk of the Court of Appeal of the State of California for the Third Appellate District, do hereby certify that the attached opinion or order, previously provided to the parties, is a true and correct copy of the original opinion or order entered in the above entitled cause that has now become final.

WITNESS my hand and the seal of the Court affixed at my office this 23rd day of April 2020.

ANDREA K. WALLIN-ROHMANN
Clerk


By: Liz Outman
Assistant Deputy Clerk II



Receipt of the original remittitur in the above case is hereby acknowledged.

Dated:

Trial Court Clerk

By:
Deputy Clerk

cc: See Mailing List

IN THE
Court of Appeal of the State of California
IN AND FOR THE
THIRD APPELLATE DISTRICT


MAILING LIST

Re: The People v. Huggins
C086939
Sacramento County
No. 17FE008641

Copies of this document have been sent by mail to the parties checked below unless they were noticed electronically. If a party does not appear on the TrueFiling Servicing Notification and is not checked below, service was not required.

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