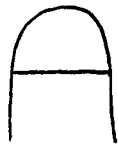


APPENDIX



SUPREME COURT
FILED

Court of Appeal, Second Appellate District, Division Seven - No. B319570 JUL 26 2023

S280664

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

EDGAR ARELLANO, Defendant and Appellant.

The petition for review is denied.

RECEIVED FOR

AR

JUL 31 2023

EXAMINED BY

ON

GUERRERO

Chief Justice

(APPENDIX - C)

FILED

May 17, 2023

EVA McCLINTOCK, Clerk

Jose Zelaya Deputy Clerk

Filed: 5/17/23

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGAR ARELLANO,

Defendant and Appellant.

B319570

(Los Angeles County
Super. Ct. No. KA112598)

APPEAL from a postjudgment order of the Superior Court of Los Angeles County, Juan Carlos Dominguez, Judge.

Affirmed.

Anna Rea, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy

Document received by the CA Supreme Court.

(APPENDIX - A)

Attorney General, and Daniel C. Chang, Deputy Attorney General, for Plaintiff and Respondent.

Edgar Arellano was convicted in 2017 of residential burglary with a person present (Pen. Code, §§ 459, 667.5, subd. (c)(21))¹ with a prior strike (§§ 667, subds (b)-(i), 1170.12) and two prior serious felony convictions (§ 667, subd. (a)) and sentenced pursuant to a negotiated plea agreement to 22 years in state prison—a sentence that included the upper term of six years on the aggravated burglary count (doubled as a result of the prior strike conviction). On January 12, 2022 Arellano filed a petition for resentencing, citing Senate Bill No. 567 (Stats. 2021, ch. 731, § 1.3) (Senate Bill 567), which, effective January 1, 2022, amended section 1170, subdivision (b), to limit a trial court’s discretion to impose the upper term of the triad (lower, middle or upper term of imprisonment) under California’s determinate sentencing law. The superior court denied the petition, ruling Arellano was ineligible for relief because his conviction had become final before the effective date of Senate Bill 567 and he had been sentenced pursuant to the terms of a negotiated agreement. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Arellano’s Conviction and First Petition for Resentencing*

In April 2016 Arellano was arrested after he entered the dormitory room of a female college student while she was sleeping. While in the room, Arellano removed some of the student’s undergarments from a laundry hamper. Arellano was

¹ Statutory references are to this code.

not a student at the college and did not have permission to be in the dormitory.

In January 2017, pursuant to a negotiated agreement, Arellano pleaded no contest to first degree burglary with a person present and admitted a 1999 first degree burglary conviction as a prior strike and 1999 and 2002 first degree burglary convictions as prior serious felony convictions under section 667, subdivision (a)(1). He was sentenced to an aggregate state prison term of 22 years, consisting of the six-year upper term for residential burglary, doubled, plus two five-year terms for the prior serious felony enhancements.

This court affirmed Arellano's conviction on November 29, 2017. (*People v. Arellano* (Nov. 29, 2017, B281513) [nonpub. opn.] (*Arellano I*.) Arellano's petition for review in the California Supreme Court (S246344) was denied on February 14, 2018. His petition for writ of certiorari with the United States Supreme Court was denied April 22, 2019, at which time the judgment became final. (See *People v. Buycks* (2018) 5 Cal.5th 857, 876, fn. 5 ["[a] judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari with the United States Supreme Court have expired"].)

On June 5, 2019 Arellano petitioned for resentencing under Senate Bill No. 1393 (Stats. 2018, ch. 1013, §§ 1 & 2), which, effective January 1, 2019, allowed the trial court to exercise its discretion to strike or dismiss section 667, subdivision (a), prior serious felony enhancements. The superior court denied the motion, ruling Senate Bill No. 1393 was not retroactive and, in any event, did not apply when the defendant had agreed in a negotiated plea to a specific prison term that included those enhancements.

While Arellano's appeal of that denial was pending in this court, the Supreme Court decided *People v. Stamps* (2020) 9 Cal.5th 685 (*Stamps*), holding Senate Bill No. 1393 applied to any case not yet final on appeal on its effective date; a defendant sentenced pursuant to a negotiated plea agreement need not obtain a certificate of probable cause to claim on appeal the new law applies to him or her; Senate Bill No. 1393 applied to negotiated sentences, at least to a limited extent; but, if the trial court was inclined to exercise its discretion not to impose a prior serious felony enhancement that was part of a negotiated sentence, the prosecutor was entitled to withdraw assent to the plea agreement. Based on *Stamps*, we reversed the postjudgment order denying Arellano's motion for resentencing and remanded the matter to provide Arellano the opportunity to ask the trial court to exercise its discretion not to impose the prior serious felony enhancements and, if such a request was made, for the parties and the trial court to follow the process approved in *Stamps*. (*People v. Arellano* (Sept. 14, 2020, B300847) [nonpub. opn.] (*Arellano II*).)

On remand the superior court denied Arellano's request to strike the prior serious felony enhancements from the agreed-upon sentence. We affirmed that order, finding no cognizable issues had been raised or identified in our own independent review of the record. (*People v. Arellano* (Jan. 26, 2022, B314434) [nonpub. opn.] (*Arellano III*).)

2. *Arellano's Second Petition for Resentencing*

On January 12, 2022 Arellano filed a petition for resentencing under Senate Bill 567. Arellano contended he was entitled to a hearing to allow the court to consider whether to resentence him in accordance with Senate Bill 567's amendments

to section 1170, subdivision (b), which limited the authority of the trial court to impose a sentence exceeding the middle term. He also noted that Assembly Bill No. 1618 (Stats. 2019, ch. 586, § 1), added section 1016.8, effective January 1, 2020, providing, in part, that future beneficial changes in sentencing laws could not be denied to an individual who was convicted pursuant to a negotiated plea agreement.

The superior court called the matter on January 31, 2022 without Arellano being present or represented by counsel and denied the petition. The court ruled, “Defendant’s sentence is pursuant to an agreed upon disposition between the defense and the People. [¶] SB 567 does not apply to cases ‘final’ when law was enacted.”

Arellano filed a timely notice of appeal.

DISCUSSION

1. *Senate Bill 567’s Amendments to Section 1170*

When Arellano pleaded no contest in 2017, section 1170, subdivision (b), provided, “When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court.” (Stats. 2020, ch. 29, § 14.) Pursuant to Senate Bill 567, effective January 1, 2022, the Legislature amended section 1170, subdivision (b), to provide, “(1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph (2). [¶] (2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment

exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.” (Stats. 2021, ch. 731, § 1.3.) The court, however, “may consider the defendant’s prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury.” (§ 1170, subd. (b)(3).)² Senate Bill 567’s amendments were intended “to limit the sentencing discretion of trial courts” and to “potentially lessen punishment for defendants sentenced to the upper term on an offense.” (*People v. Zabelle* (2022) 80 Cal.App.5th 1098, 1108, 1109.)

The ameliorative provisions of Senate Bill 567 apply retroactively to judgments that were not final as of January 1, 2022. (*People v. Zabelle, supra*, 80 Cal.App.5th at p. 1109; *People v. Flores* (2022) 73 Cal.App.5th 1032, 1039; see *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 308 [“in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that

² As discussed, with his plea in 2017 Arellano admitted he had committed two prior serious felonies (first degree burglary in 1999 and 2002). However, the record on appeal does not allow us to determine whether other aggravating factors not admitted by Arellano—for example, that the victim, a college student asleep in her dormitory room, was particularly vulnerable or the crime involved planning or sophistication (see Cal. Rules of Court, rule 4.421(a)(3), (8))—also played a role in the People’s agreement to, and the trial court’s approval of, a disposition including an upper term for the current burglary offense.

are final and sentences that are not”]; see also *In re Estrada* (1965) 63 Cal.2d 740, 744-745.)

2. *This Court Has Jurisdiction To Consider the Issue of Finality Raised by Arellano’s Appeal*

Citing *People v. King* (2022) 77 Cal.App.5th 629 (*King*), the Attorney General argues, because Arellano’s judgment of conviction was final as of April 22, 2019 and remained final notwithstanding our September 2020 remand in *Arellano II*, the superior court lacked jurisdiction to rule on Arellano’s nonstatutory petition for resentencing (although, as discussed, the superior court did not dismiss Arellano’s petition on that ground) and, as a consequence, this court also lacks jurisdiction to entertain Arellano’s appeal. But this is not a case like *People v. Torres* (2020) 44 Cal.App.5th 1081 or *People v. Fuimaono* (2019) 32 Cal.App.5th 132 where the defendant’s request for modification of his sentence to benefit from new ameliorative sentencing rules was concededly made long after the judgment in the case was final and without any statutory authorization. The Attorney General does not contend—and we do not believe—the superior court lacked jurisdiction to consider the applicability of Senate Bill 567 to Arellano’s stipulated sentence in light of *Stamps, supra*, 9 Cal.5th 685 if the judgment in his case was not final as of January 1, 2022. At the very least, therefore, the superior court necessarily had jurisdiction to consider whether the 2017 judgment was final; and, similarly, we have jurisdiction to decide that issue in order to determine our own jurisdiction. (See generally *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 252 [“we have an independent obligation in this as in every matter to confirm whether jurisdiction exists”]; *Kirk v. Ratner* (2022) 74 Cal.App.5th 1052, 1060 [same].)

Nothing in *King, supra*, 77 Cal.App.5th 629 is to the contrary. The incarcerated defendant in *King* moved to vacate an unauthorized sentence well after the judgment was final and he had begun serving the sentence, relying on the rule that an unauthorized sentence may be corrected at any time. (*Id.* at pp. 633-634.) Our colleagues in Division Two of this court held the unauthorized sentence rule is an exception to the waiver doctrine (that is, that a defendant generally forfeits an objection not properly made in the trial court at the time an alleged error was committed), but not to the requirement the court must have jurisdiction before it may act. (*Id.* at p. 635 [“Such a sentence may be challenged at any time, even after a judgment of conviction has become final, and even if the judgment has already been affirmed on appeal. [Citation.] However, ‘to invoke this rule the court must have jurisdiction over the judgment’”]; accord, *In re G.C.* (2020) 8 Cal.5th 1119, 1130.) As *King* explained, “[T]he unauthorized sentence doctrine does not itself create jurisdiction for a trial court to rule on an incarcerated defendant’s motion to correct an alleged illegal sentence after the conviction is final and after the execution of the sentence has begun.” (*King*, at pp. 641-642.)

Applying the general rule that, “once a judgment is rendered and execution of the sentence has begun, the trial court does not have jurisdiction to vacate or modify the sentence,” *King* then held a “freestanding motion challenging an incarcerated defendant’s sentence is not a proper procedural mechanism to seek relief. A motion is not an independent remedy, but must be attached to some ongoing action.” (*King, supra*, 77 Cal.App.5th at p. 640; accord, *People v. Torres, supra*, 44 Cal.App.5th at p. 1084.) Finally, quoting from the decision in *Torres* at

page 1084, *King* held, “[I]f the trial court does not have jurisdiction to rule on a motion to vacate or modify a sentence, an order denying such a motion is nonappealable, and any appeal from such an order must be dismissed,” and dismissed King’s appeal. (*King*, at pp. 634, 641; see *People v. Loper* (2015) 60 Cal.4th 1155, 1165-1166 [because the defendants in the cases cited by the Attorney General moved for resentencing more than 120 days after their commitment and the trial courts lacked jurisdiction to resentence them on their own motion, “their refusal to act on a defective defense motion for resentencing could not have affected any legal rights the defendants in those cases possessed, and the appellate courts properly dismissed the appeals”]; *People v. Fuimaono*, *supra*, 32 Cal.App.5th at p. 135 [“Because the trial court lacked jurisdiction to modify defendant’s sentence, denial of his motion to modify his sentence could not have affected his substantial rights. [Citation.] Accordingly, the ‘order denying [the] motion to modify sentence is not an appealable order,’ and the appeal must be dismissed”].)³

³ The *King* court explained the incarcerated defendant in the case before it could seek to correct his unauthorized sentence through a petition for writ of habeas corpus. (*King*, *supra*, 77 Cal.App.5th at p. 640.) In his opening brief Arellano requests we treat his appeal as a petition for writ of habeas corpus and consider the merits of his position if we were to find the superior court’s January 31, 2022 order was not appealable. Unquestionably we would have jurisdiction to do so. (Cf. *People v. Buycks*, *supra*, 5 Cal.5th at p. 895 [“habeas corpus proceedings may provide a vehicle to obtain relief limited to a new sentencing hearing in the original criminal action, which may result in a different sentence”].)

Before dismissing the appeal, however, the *King* court emphasized, “Our holding here is necessarily limited to the circumstances of this case, involving a motion filed by an incarcerated defendant seeking a substantive change to his sentence after his conviction has become final and where the trial court did not otherwise have jurisdiction.” (*King, supra*, 77 Cal.App.5th at p. 641.)

Unlike the appellant in *King*, Arellano challenges the superior court’s finding his judgment of conviction was final as of April 22, 2019 and, with that, disputes the Attorney General’s contention the superior court had no jurisdiction to consider his petition for resentencing—a somewhat different issue from whether a defendant whose judgment is final may benefit from Senate Bill 567’s ameliorative changes to California’s determinate sentencing law, which was the question addressed in the superior court’s ruling. Arellano had the right to assert his conviction was not final prior to January 1, 2022 in the superior court and to appeal to this court the superior court’s adverse finding, the resolution of which may affect his substantial rights. (See § 1237, subd. (b) [an appeal may be taken by a defendant from “any order made after judgment, affecting the substantial rights of the party”]; *Teal v. Superior Court* (2014) 60 Cal.4th 595, 600 [“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”].)

3. *Arellano's Judgment of Conviction Remained Final as of April 22, 2019 Notwithstanding Our Remand Under Stamps*

As discussed, on June 5, 2019 Arellano petitioned for resentencing under Senate Bill No. 1393. In *Arellano II, supra*, B300847, we held, because the United States Supreme Court did not deny Arellano's petition for writ of certiorari seeking review of our decision in *Arellano I, supra*, B281513, until April 22, 2019, the judgment was not yet final on January 1, 2019 when Senate Bill No. 1393 became effective. Accordingly, pursuant to *Stamps, supra*, 9 Cal.5th 685, we reversed the order denying Arellano's petition for resentencing and remanded the matter "with directions to the superior court to consider Arellano's request, if he elects to make one, to reduce his sentence by dismissing one or both the prior serious felony enhancements previously imposed and, if a request is made, to follow the process described by the Supreme Court in *Stamps*."

Following issuance of our remittitur in *Arellano II*, Arellano asked the court to exercise its discretion to strike the two prior serious felony enhancements it had imposed in 2017. The court denied Arellano's request on June 2, 2021, and we affirmed that order in *Arellano III, supra*, B314434, on January 26, 2022. The California Supreme Court denied Arellano's petition for review on April 13, 2022 (S273539). The United States Supreme Court denied his petition for writ of certiorari on January 26, 2023.

Because the proceedings on his request pursuant to the procedure established in *Stamps, supra*, 9 Cal.5th 685 were still pending on January 1, 2022, Arellano contends his judgment of conviction was no longer final on that date and he is entitled to the benefit of Senate Bill 567's ameliorative provisions restricting

the authority of the superior court to impose an upper term sentence absent jury findings or an admission by the defendant. To support this argument Arellano cites only the Supreme Court's recent decision in *People v. Padilla* (2022) 13 Cal.5th 152 (*Padilla*)—a case that stood in a very different posture from Arellano's.

In *Padilla* the Supreme Court held the presumption of retroactivity for legislation that lessens criminal sanctions applied to a defendant whose judgment had become final on direct review but was subsequently vacated for resentencing during habeas corpus proceedings. (*Padilla, supra*, 13 Cal.5th at pp. 158-159.) The Court explained, "A case is final when 'the criminal proceeding as a whole' has ended [citation] and 'the courts can no longer provide a remedy to a defendant on direct review' [citation]. When Padilla's sentence was vacated, the trial court regained the jurisdiction and duty to consider what punishment was appropriate for him, and Padilla regained the right to appeal whatever new sentence was imposed. His judgment thus became nonfinal." (*Id.* at pp. 161-162.)

Unlike the habeas proceedings in *Padilla*, before we returned Arellano's case to the superior court in *Arellano II*, we did not vacate his sentence; and following remand the superior court had no duty to resentence Arellano. To the contrary, absent * a request by Arellano pursuant to the procedure outlined in *Stamps*, no further proceedings would have occurred at all. Once made, Arellano's request that the superior court modify his 2017 sentence by striking one or both five-year prior serious felony enhancements was just that—a request that the sentence be vacated and he be resentenced. Because that request was rejected, there was no new sentencing hearing. Accordingly, the

original judgment of conviction remained final as of April 22, 2019 when direct review was completed, well before the effective date of Senate Bill 567. (See *Padilla*, *supra*, 13 Cal.5th at p. 162 [“[m]erely filing a collateral attack does not make the judgment nonfinal”]; *People v. Guillory* (2022) 82 Cal.App.5th 326, 335-336 [“An order to show cause under section 1172.6 does not vacate the petitioner’s sentence but, like the habeas corpus petition in *Padilla*, sets in motion proceedings to determine whether the petitioner is entitled to vacatur and resentencing. [Citation.] The original judgment remains final until that determination is made”]; see also *People v. Rodriguez* (1998) 17 Cal.4th 253, 258 [“we may properly remand to permit the trial court to make the threshold determination of whether to exercise its discretion in defendant’s favor without necessarily requiring resentencing unless the court does act favorably”]; *People v. Cervantes* (2021) 72 Cal.App.5th 326, 332 [remand to allow the trial court to exercise its newly authorized discretion to strike firearm enhancements under Senate Bill No. 630 (Stats. 2017, ch. 682) “did not vacate the sentence in any way”].)

The retroactive benefits of Senate Bill 567 extend only to nonfinal judgments. The superior court correctly denied Arellano’s petition for resentencing because the judgment of conviction in his case was final before the legislation’s effective date.⁴

⁴ The courts of appeal have disagreed whether Senate Bill 567 applies to a defendant who stipulated to a sentence that includes an upper term as part of a negotiated plea agreement. In *People v. Mitchell* (2022) 83 Cal.App.5th 1051, review granted December 14, 2022, S277314, the court held it did not, reasoning, when sentencing the defendant pursuant to the stipulated agreement, the trial court “had no opportunity to exercise any

DISPOSITION

The postjudgment order denying Arellano's petition for resentencing is affirmed.


PERLUSS, P. J.

We concur:


SEGAL, J.


FEUER, J.

discretion in deciding whether the imposition of the upper, middle, or lower term would best serve 'the interests of justice.'" (*Id.* at p. 1058.) In *People v. Todd* (2023) 88 Cal.App.5th 373, review granted April 26, 2023, S279154, the court held it did, pointing to section 1016.8, effective January 1, 2020, which provides an individual convicted pursuant to a negotiated plea agreement is entitled to subsequent beneficial changes in sentencing laws. The *Todd* court explained, in its view, "the relevant question here is not whether the sentencing judge is bound by the parties' stipulated sentence, but whether Todd is entitled to the ameliorative effect of Senate Bill No. 567's new sentencing provisions." (*Id.* at p. 380.) Concluding he was, the court remanded the case for resentencing under section 1170, subdivision (b), as amended by Senate Bill 567, in accordance with the procedure established by the Supreme Court in *Stamps*, *supra*, 9 Cal.5th 685. (*Todd*, at p. 382.)

Because we conclude Arellano's judgment of conviction was final prior to the effective date of Senate Bill 567, we need not add our view on the issue, which is currently pending in the Supreme Court in *People v. Mitchell*, *supra*, S277314.

Filed 9/14/20

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION SEVEN

FILED

Sep 14, 2020

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGAR ARELLANO,

Defendant and Appellant.

B300847

DANIEL P. POTTER, Clerk

MELISSA URIBE Deputy Clerk

(Los Angeles County
Super. Ct. No. KA112598)

APPEAL from an order of the Superior Court of Los Angeles County, Salvatore Sirna, Judge. Reversed and remanded with directions.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, and Scott A. Taryle, Deputy Attorney General, for Plaintiff and Respondent.

(APPENDIX-A)

Edgar Arellano, sentenced pursuant to a negotiated plea agreement to state prison for 22 years for first degree burglary with prior conviction enhancements, moved for resentencing pursuant to Senate Bill No. 1393 (Stats. 2018, ch. 1013, §§ 1 & 2) (Senate Bill 1393), which, effective January 1, 2019, allows the trial court to exercise its discretion to strike or dismiss Penal Code section 667, subdivision (a), prior serious felony enhancements. The trial court denied the motion, ruling Senate Bill 1393 was not retroactive and, in any event, did not apply when the defendant had agreed in a negotiated plea to a specific prison term that included those enhancements.

While Arellano's appeal of the denial of his postjudgment motion was pending in this court, the Supreme Court decided *People v. Stamps* (2020) 9 Cal.5th 685 (*Stamps*), holding Senate Bill 1393 applies to any case not yet final on appeal on its effective date; a defendant sentenced pursuant to a negotiated plea agreement need not obtain a certificate of probable cause to claim on appeal the new law applies to him or her; Senate Bill 1393 applies to negotiated sentences, at least to a limited extent; but, if the trial court is inclined to exercise its discretion not to impose a prior serious felony enhancement that was part of a negotiated sentence, the prosecutor is entitled to withdraw assent to the plea agreement.

Based on *Stamps*, we reverse the postjudgment order denying Arellano's motion for resentencing and remand the matter to provide Arellano the opportunity to ask the trial court to exercise its discretion not to impose the prior serious felony enhancements and, if such a request is made, for the parties and the trial court to follow the process approved in *Stamps*.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2016 Arellano was arrested after he entered the dormitory room of a female college student while she was sleeping. While in the room, Arellano removed some of the student's undergarments from a laundry hamper. Arellano was not a student at the college and did not have permission to be in the dormitory.

In January 2017, pursuant to a negotiated agreement, Arellano pleaded no contest to first degree burglary with a person present and admitted a 1999 first degree burglary conviction as a prior strike and 1999 and 2002 first degree burglary convictions as prior serious felony convictions under section 667, subdivision (a)(1). He was sentenced to an aggregate state prison term of 22 years, consisting of the six-year upper term for residential burglary, doubled, plus two five-year terms for the prior serious felony enhancements.

This court affirmed Arellano's conviction in a nonpublished opinion on November 29, 2017. (*People v. Arellano* (Nov. 29, 2017, B281513).) Arellano's petition for review in the California Supreme Court (S246344) was denied February 14, 2018. His petition for writ of certiorari with the United States Supreme Court was denied April 22, 2019, at which time the judgment became final. (See *People v. Buycks* (2018) 5 Cal.5th 857, 876, fn. 5 ["[a] judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari with the United States Supreme Court have expired"].)

On June 5, 2019 Arellano petitioned for resentencing under Senate Bill 1393. The trial court denied the petition on June 27, 2019, ruling, "Defendant's sentence in this matter was an agreed upon disposition between defendant and the People. Defendant

expressly agreed to the sentence and admitted two strikes prior [sic] under Penal Code section 667(a)(1). Defendant failed to provide the court with competent authority that SB 1393 is to be applied retroactively, and the plain language of the amended Penal Code sections do not contemplate retroactive applicability.”

Arellano filed a timely notice of appeal. He did not seek or obtain a certificate of probable cause.

DISCUSSION

On September 30, 2018 the Governor signed Senate Bill 1393, which amended Penal Code sections 667, subdivision (a), and 1385, subdivision (b), effective January 1, 2019, to allow the trial court to exercise its discretion to strike or dismiss a prior serious felony conviction for purposes of sentencing a defendant convicted of a serious felony. As the Attorney General acknowledges, contrary to the trial court’s ruling, the new law applies to all judgments not final as of January 1, 2019. (*Stamps, supra*, 9 Cal.5th at p. 699 [“We agree with defendant that, under [*In re*] *Estrada* [(1965) 63 Cal.2d 740], Senate Bill 1393 applies to his case retroactively because his judgment is not yet final. Eliminating the prior restriction on the court’s ability to strike a serious felony enhancement in furtherance of justice constitutes an ameliorative change within the meaning of *Estrada*”]; see *People v. Zamora* (2019) 35 Cal.App.5th 200, 208; *People v. Garcia* (2018) 28 Cal.App.5th 961, 973.)

Arellano and the Attorney General agree, in supplemental letter briefs filed following the Supreme Court’s decision in *Stamps, supra*, 9 Cal.5th 685 that *Stamps* has resolved the remaining issues presented by this appeal.

First, the Supreme Court held a certificate of probable cause is not required for a defendant, who entered a plea pursuant to a negotiated agreement for a specific prison term, to assert on appeal entitlement to the benefits of an ameliorative change in the law: “Stamps does not seek to put aside or withdraw his plea. He does not urge that his plea was invalid when made. Instead, he seeks relief because the law subsequently changed to his potential benefit. His appeal, then, does not attack the plea itself and does not require a certificate of probable cause.” (*Stamps, supra*, 9 Cal.5th at p. 698.)

Second, again contrary to the trial court’s ruling, that Arellano agreed as part of a negotiated plea to a specific prison term including two prior serious felony conviction enhancements does not necessarily preclude Arellano from benefitting from Senate Bill 1393: “As we reasoned *ante*, we agree with defendant that Senate Bill 1393 should be applied retroactively to him, and the circumstance that his conviction resulted from a plea agreement did not change that conclusion.” (*Stamps, supra*, 9 Cal.5th at p. 705.)

Third, the trial court is not authorized to unilaterally modify the plea agreement by striking the serious felony enhancement but otherwise keeping the remainder of the bargain—the position advocated by Arellano in his appeal. (*Stamps, supra*, 9 Cal.5th at p. 707.) As the Supreme Court explained, if the defendant asks the trial court to exercise its discretion to strike the enhancement(s) and the court declines to do so, “that ends the matter and defendant’s sentence stands.” (*Ibid.*) However, “[i]f the court indicates an inclination to exercise its discretion under section 1385, the prosecution may, of course, agree to modify the bargain to reflect the downward

departure in the sentence such exercise would entail. Barring such a modification agreement, 'the prosecutor is entitled to the same remedy as the defendant—withdrawal of assent to the plea agreement.'" (*Ibid.*) Finally, even if the prosecutor and the defendant agree the negotiated prison term should be reduced by eliminating the prior serious felony enhancement, the trial court retains its authority to withdraw approval of the plea agreement. (*Id* at p. 708.)

In accordance with the Supreme Court's holdings in *Stamps*, we reverse the trial court's order denying Arellano's postjudgment motion for resentencing. The matter is remanded to give Arellano the opportunity to ask the trial court to exercise its discretion, subject to the approval of the People, to reduce his negotiated sentence by striking one or both of the prior serious felony enhancements that are now part of his sentence.

DISPOSITION

The order denying Arellano's postjudgment motion is reversed. The matter is remanded with directions to the superior court to consider Arellano's request, if he elects to make one, to reduce his sentence by dismissing one or both the prior serious felony enhancements previously imposed and, if a request is made, to follow the process described by the Supreme Court in *Stamps, supra*, 9 Cal.5th 685.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.

APPENDIX

3

CASE NUMBER: KA112058

DEFENDANT'S NAME

Edgar Arrellano

The Court has received, read and considered defendant's

☒ Letter/Motion dated 1-12-22

Defendant is requesting:

Petition for Resentencing under SB 567

FILED
Superior Court of California
County of Los Angeles

JAN 31 2022

☒ Defendant's Request/ Motion is **DENIED** for the following reasons:

Sherril R. Carter, Executive Officer/Clerk
[Signature] Deputy

☐ There is no substantial right the defendant is attempting to enforce

☒ Defendant's sentence is pursuant to an agreed upon disposition between the defense and the people.

☒ Other

SB 567 DOES NOT APPLY TO CASES "FINAL" WHERE
LAW WAS ENACTED

☐ Defendant's request is **GRANTED**

Further instructions:

☐ Petition for *Writ of Habeas Corpus*

☐ Defendant's Petition is **DENIED** for the following reasons;

☐ The facts presented do not justify the Court granting defendant's petition.

☐ The court does not find any facts to support the issue raised. The court only finds Opinions and conclusions.

☐ Other

☐ Defendant's Petition is **GRANTED**.

(Refer to clerk's manual/or supervisor's instruction on how to proceed at this point)

Dated: JAN 31 2022

[Signature]
JUAN CARLOS DOMINGUEZ
Judicial Officer's Signature

A copy of minute order is to be provided to the defendant via first class mail at the address provided

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 04/08/22

CASE NO. KA112598

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: EDGAR ARELLANO

INFORMATION FILED ON 11/09/16.

COUNT 01: 459 PC FEL

ON 01/31/22 AT 900 AM IN EAST DISTRICT DEPT EAA

CASE CALLED FOR COURT CONSIDERATION

THIS IS A THIRD STRIKE CASE.

PARTIES: JUAN C. DOMINGUEZ (JUDGE) MELISSA VASQUEZ (CLERK)
NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

THE COURT HAS RECEIVED, READ AND CONSIDERED DEFENDANT'S
PETITION RECEIVED ON 1/12/22.

DEFENDANT IS REQUESTING PETITION FOR RESENTENCING UNDER SB 567.

DEFENDANT'S REQUEST/MOTION IS DENIED FOR THE FOLLOWING REASONS:

DEFENDANT'S SENTENCE IS PURSUANT TO AN AGREED UPON DISPOSITION
BETWEEN THE DEFENSE AND THE PEOPLE.

SB 567 DOES NOT APPLY TO CASES "FINAL" WHEN LAW WAS ENACTED.

DEFENDANT REMAINS COMMITTED TO THE DEPARTMENT OF CORRECTIONS.

I, SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK OF THE SUPERIOR
COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, DO HEREBY CERTIFY
THAT I AM NOT A PARTY TO THE CAUSE HEREIN, AND THAT ON THIS DATE
THE FOLLOWING DOCUMENT ENTITLED MINUTE ORDER FILED 1/31/22
IS SERVED UPON THE PARTY OR COUNSEL NAMED BELOW BY

PAGE NO. 1

COURT CONSIDERATION
HEARING DATE: 01/31/22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT EA-H HON. JUAN CARLOS DOMINGUEZ, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)
PLAINTIFF,)
VS.) NO. KA112598
01-EDGAR ARELLANO,)
DEFENDANT.)
_____)

REPORTERS' TRANSCRIPT OF PROCEEDINGS

JANUARY 13, 2017; JUNE 2, 2021

APPEARANCES:

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
BY: BRENDAN J. SULLIVAN, DEPUTY
211 WEST TEMPLE STREET, 12TH FLOOR
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER
BY: TAMELA CASH-CURRY, DEPUTY
210 WEST TEMPLE STREET, 19TH FLOOR
LOS ANGELES, CALIFORNIA 90012

JACQUELINE HALL, CSR NO. 7951
DEBRA KAY FORD, CSR NO. 12023
OFFICIAL REPORTERS

1 CASE NUMBER: KA112598-01
2 CASE NAME: PEOPLE VS. EDGAR ARELLANO
3 POMONA, CALIFORNIA JANUARY 13, 2017
4 DEPARTMENT EA-F HON. JACK P. HUNT, JUDGE
5 REPORTER: JACQUELINE HALL, CSR NO. 7951
6 TIME: A.M. SESSION
7

8 APPEARANCES:

9 DEFENDANT EDGAR ARELLANO, PRESENT WITH
10 COUNSEL, TAMELA CASH-CURRY, DEPUTY PUBLIC
11 DEFENDER; JOHN URGO, DEPUTY DISTRICT
12 ATTORNEY, REPRESENTING THE PEOPLE OF THE
13 STATE OF CALIFORNIA.
14

15 THE COURT: PEOPLE VERSUS EDGAR ARELLANO, CASE
16 KA112598. THE DEFENDANT IS PRESENT IN CUSTODY WITH
17 COUNSEL, DEPUTY PUBLIC DEFENDER TAMELA CASH-CURRY.

18 THE PEOPLE ARE REPRESENTED BY DEPUTY
19 DISTRICT ATTORNEY JOHN URGO.

20 THE MATTER IS HERE FOR ARRAIGNMENT.

21 MS. CASH-CURRY, WAIVE READING OF THE
22 INFORMATION, STATEMENT OF RIGHTS?

23 MS. CASH-CURRY: YES, YOUR HONOR.

24 THE COURT: HOW DOES YOUR CLIENT WISH TO PLEAD?

25 MS. CASH-CURRY: YOUR HONOR, THERE WILL BE A NO
26 CONTEST PLEA TO COUNT 1 IN THIS MATTER AND AN ADMISSION OF
27 THE STRIKE AND FIVE-YEAR PRIORS.

28 THE COURT: MR. ARELLANO, DO YOU UNDERSTAND THE

1 COURT WILL TREAT A NO CONTEST PLEA THE SAME AS A GUILTY
2 PLEA AND YOU WILL BE FOUND GUILTY ON THAT PLEA?

3 THE DEFENDANT: YES, YOUR HONOR.

4 THE COURT: I HAVE TO ADVISE YOU THAT IF YOU ARE
5 NOT A CITIZEN OF THE UNITED STATES A PLEA OF NO CONTEST TO
6 THIS CHARGE WILL RESULT IN YOUR DEPORTATION, EXCLUSION
7 FROM ADMISSION OR REENTRY TO THE UNITED STATES, AND DENIAL
8 OF NATURALIZATION AND AMNESTY.

9 DO YOU UNDERSTAND THAT?

10 THE DEFENDANT: YES, YOUR HONOR.

11 THE COURT: THE CONDUCT CREDITS ARE 20 PERCENT,
12 RIGHT?

13 MR. URGO: IT IS 85 PERCENT. IT IS 15 PERCENT,
14 JUDGE. 85 PERCENT CASE.

15 THE COURT: PERSON PRESENT. OKAY.

16 MR. ARELLANO, I HAVE A DOCUMENT ENTITLED
17 FELONY ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM.

18 DID YOU READ AND UNDERSTAND THIS FORM?

19 THE DEFENDANT: I'M SORRY, SIR?

20 THE COURT: I HAVE A DOCUMENT ENTITLED FELONY
21 ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM.

22 DID YOU READ AND UNDERSTAND THE FORM?

23 THE DEFENDANT: YES, YOUR HONOR.

24 THE COURT: DID YOU GO OVER IT THOROUGHLY WITH YOUR
25 LAWYER?

26 THE DEFENDANT: YES, YOUR HONOR.

27 THE COURT: DO YOU HAVE ANY QUESTIONS?

28 THE DEFENDANT: (NO RESPONSE.)

1 THE COURT: IF YOU DO, ASK YOUR LAWYER.

2

3 (CONVERSATION BETWEEN THE DEFENDANT
4 AND COUNSEL.)

5

6 MS. CASH-CURRY: HE WANTS TO FINISH HIS CLASSES IN
7 COUNTY JAIL. HE IS ENROLLED IN CLASSES.

8 THE COURT: BETTER TALK TO THE D.A.

9 MR. URGO: HE HAS TO BE SENTENCED TODAY.

10 THE COURT: DO YOU HAVE ANY OTHER QUESTIONS?

11 THE DEFENDANT: CAN I ASK YOU A QUESTION, SIR? I
12 MEAN TO THE COURT.

13 THE COURT: SURE.

14 THE DEFENDANT: I MEAN, THE REASON WHY ALL THIS --
15 I GET IN TROUBLE IS BECAUSE I HAVE A DRUG PROBLEM.

16 THE COURT: LOOK, YOU'VE BEEN IN AND OUT OF PRISON.
17 YOU'VE HAD A NUMBER OF OPPORTUNITIES. I HEAR THIS EVERY
18 DAY WHEN PEOPLE ARE SITTING THERE. NOW I WANT A PROGRAM
19 BECAUSE I'M SITTING IN CUSTODY LOOKING AT A LOT OF YEARS.
20 AS SOON AS YOU WALK OUT THAT DOOR YOU DON'T WANT A
21 PROGRAM.

22 ALSO, AFTER I SENTENCE YOU I'LL SAY, YOU
23 WANT ME TO SEND YOU TO DONOVAN OR CORCORAN? YOU'RE GOING
24 TO SAY, NO, I WANT FIRE CAMP.

25 THE DEFENDANT: I WANT A LIFE IS WHAT I WANT. I
26 WANT A LIFE.

27 THE COURT: THIS IS THE DEAL. THERE'S NOTHING I
28 CAN DO ABOUT IT. YOU GOT THE STRIKES. IT IS UP TO THE

1 D.A. THEY HOLD THE CARDS.

2 THE DEFENDANT: YOUR HONOR, PLEASE, I'VE NEVER --

3 WHEN I TRY TO DO THE PROGRAMS IN JAIL IT'S
4 JUST SUCH A RUCKUS IN THERE, IT'S SO CRAZY IN THERE, YOU
5 CAN'T EVEN DO IT.

6 THE COURT: MS. CASH-CURRY, DO YOU WANT ME TO JUST
7 SET IT FOR TRIAL?

8 THE DEFENDANT: NO, SIR, YOU DON'T HAVE TO SET IT
9 FOR TRIAL.

10 MS. CASH-CURRY: WE'RE READY. THANK YOU, YOUR
11 HONOR.

12 THE COURT: DO YOU WANT TO TAKE THE DEAL?

13 THE DEFENDANT: YES, YOUR HONOR.

14 THE COURT: ARE THESE YOUR INITIALS IN THE BOXES
15 AND YOUR SIGNATURE AT THE TOP OF PAGE 4?

16 THE DEFENDANT: YES, YOUR HONOR.

17 THE COURT: DO YOU WAIVE AND GIVE UP ALL OF THE
18 RIGHTS ON THE FORM?

19 THE DEFENDANT: YES, YOUR HONOR.

20 THE COURT: MR. URGO.

21 MR. URGO: MR. ARELLANO, AS A CONSEQUENCE OF YOUR
22 PLEA YOU'LL BE SENTENCED TO STATE PRISON FOR 22 YEARS.
23 UPON YOUR RELEASE YOU'LL BE PLACED ON PAROLE. IF YOU
24 VIOLATE YOUR PAROLE YOU CAN BE REMANDED BACK IN CUSTODY
25 FOR UP TO 180 DAYS FOR EACH VIOLATION.

26 ADDITIONALLY, A MANDATORY RESTITUTION FINE
27 OF AT LEAST \$300 MUST BE IMPOSED.

28 YOU WILL BE REQUIRED TO PROVIDE SAMPLES FOR

1 A DNA DATABASE.

2 BECAUSE THIS IS A STRIKE OFFENSE, ANY
3 FELONY YOU COMMIT IN THE FUTURE THE TERM OF IMPRISONMENT
4 YOU'LL FACE IS 25 YEARS TO LIFE.

5 DO YOU UNDERSTAND THE CONSEQUENCES OF YOUR
6 PLEA?

7 THE DEFENDANT: YES.

8 MR. URGO: ARE YOU ENTERING YOUR PLEA FREELY AND
9 VOLUNTARILY AND BECAUSE YOU FEEL IT IS IN YOUR BEST
10 INTEREST TO DO SO?

11 THE DEFENDANT: YES, SIR.

12 MR. URGO: DO YOU ALSO AGREE THAT RESTITUTION IN
13 THIS CASE MAY BE CALCULATED AS TO ALL COUNTS, EVEN THOUGH
14 YOU'RE NOT PLEADING GUILTY TO ALL?

15 THE DEFENDANT: YES, SIR.

16 MR. URGO: DO YOU WAIVE AND GIVE UP ALL RIGHTS,
17 INTEREST OR CLAIMS YOU HAVE IN ANY OF THE PROPERTY THAT
18 WAS SEIZED DURING THE COURSE OF THIS INVESTIGATION AND
19 AGREE THAT THOSE ITEMS MAY BE EITHER RETURNED TO THE
20 LAWFUL OWNERS OR OTHERWISE FORFEITED TO THE POLICE
21 DEPARTMENT?

22 THE DEFENDANT: YES, SIR.

23 MR. URGO: COUNSEL STIPULATE THERE IS A FACTUAL
24 BASIS FOR THE PLEA BASED ON THE PRELIMINARY HEARING
25 TRANSCRIPT, THE PROBATION REPORT, AND THE ARREST REPORTS?

26 MS. CASH-CURRY: YES.

27 MR. URGO: MR. ARELLANO, TO COUNT 1, A VIOLATION OF
28 SECTION 459 OF THE PENAL CODE, FIRST DEGREE RESIDENTIAL

1 BURGLARY WITH A PERSON PRESENT, HOW DO YOU PLEAD?

2 THE DEFENDANT: GUILTY.

3 MS. CASH-CURRY: NO CONTEST.

4 THE DEFENDANT: NO CONTEST.

5 MR. URGO: DO YOU UNDERSTAND THAT WILL BE TREATED
6 THE SAME AS A GUILTY PLEA?

7 THE DEFENDANT: YES.

8 MR. URGO: DO YOU ADMIT THAT DURING THE COMMISSION
9 OF COUNT 1 A PERSON WAS PRESENT, IN VIOLATION OF SECTION
10 667.5(C) OF THE PENAL CODE?

11 THE DEFENDANT: YES, SIR.

12 MR. URGO: DO YOU ADMIT SUFFERING ONE PRIOR FELONY
13 CONVICTION ALLEGED UNDER SECTION 1170.12(A) THROUGH (D)
14 AND SECTION 667(B) THROUGH (I) OF THE PENAL CODE, THAT
15 PRIOR OCCURRING ON MAY 6TH, 1999, UNDER CASE NUMBER
16 KA044287, FOR THE OFFENSE OF 459 OF THE PENAL CODE?

17 THE DEFENDANT: YES, SIR.

18 MR. URGO: DO YOU ALSO ADMIT SUFFERING TWO PRIOR
19 CONVICTIONS ALLEGED UNDER SECTION 667(A)(1) OF THE PENAL
20 CODE, THE FIRST OCCURRING ON MAY 6TH, 1999, UNDER CASE
21 NUMBER KA044287, FOR THE OFFENSE OF 459 OF THE PENAL CODE,
22 AND THE SECOND ON JUNE 12TH, 2002, UNDER CASE NUMBER
23 VA070097, FOR THE OFFENSE OF 459 OF THE PENAL CODE?

24 THE DEFENDANT: YES, SIR.

25 MR. URGO: COUNSEL JOIN IN THE WAIVERS AND CONCUR
26 IN THE PLEA?

27 MS. CASH-CURRY: I DO.

28 THE COURT: THE COURT ACCEPTS THE PLEA AND

1 ADMISSIONS. I FIND THE WAIVERS ARE KNOWINGLY,
2 INTELLIGENTLY, AND UNDERSTANDINGLY MADE, THE PLEA AND
3 ADMISSIONS ARE FREELY AND VOLUNTARILY GIVEN, THE DEFENDANT
4 UNDERSTANDS THE NATURE OF THE CHARGE AND THE CONSEQUENCES
5 OF THE PLEA AND ADMISSIONS.

6 BASED ON THE STIPULATION I FIND THERE IS A
7 FACTUAL BASIS FOR THE PLEA. I FIND THE DEFENDANT GUILTY
8 ON THE PLEA.

9 I ALSO MAKE ALL THE FINDINGS ABOVE MY
10 SIGNATURE ON PAGE 4 OF THE WAIVER AND PLEA FORM.

11 MS. CASH-CURRY, WAIVE TIME FOR SENTENCING?

12 MS. CASH-CURRY: TIME IS WAIVED, YOUR HONOR. NO
13 LEGAL CAUSE. MY CLIENT HAS 239 ACTUAL DAYS CREDIT.

14 THE COURT: PARDON?

15 MS. CASH-CURRY: 239 DAYS ACTUAL.

16 THE COURT: CORRECT.

17 BASED ON THE AGREEMENT BETWEEN THE PARTIES
18 THE COURT IS GOING TO IMPOSE THE FOLLOWING SENTENCE AS TO
19 COUNT 1:

20 THE DEFENDANT IS SENTENCED TO THE HIGH TERM
21 OF SIX YEARS IN THE STATE PRISON. THAT SENTENCE IS
22 DOUBLED PURSUANT TO PENAL CODE SECTION 1170.12(A) THROUGH
23 (D) FOR A SENTENCE OF 12 YEARS.

24 THE DEFENDANT IS SENTENCED TO AN ADDITIONAL
25 TEN YEARS, FIVE YEARS FOR EACH OF THE 667(A)(1) PRIORS,
26 FOR A TOTAL SENTENCE OF 22 YEARS.

27 THE DEFENDANT HAS CREDIT FOR 239 DAYS OF
28 ACTUAL TIME, PLUS 35 DAYS CONDUCT CREDITS, FOR A TOTAL

1 CREDIT OF 274 DAYS.

2 THE DEFENDANT IS TO PAY A \$300 RESTITUTION
3 FINE, A \$40 COURT OPERATIONS FEE, A \$30 CRIMINAL
4 CONVICTION ASSESSMENT FEE, AND A \$10 CRIME PREVENTION FUND
5 FINE. THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MAY
6 DEDUCT THOSE FROM THE DEFENDANT'S EARNINGS.

7 THE DEFENDANT IS TO PAY A \$300 PAROLE
8 REVOCATION FINE. THAT FINE IS STAYED UNLESS PAROLE IS
9 REVOKED.

10 THE COURT IS GOING TO RESERVE JURISDICTION
11 OVER ACTUAL RESTITUTION.

12 SIR, YOU ARE NOT TO OWN, USE OR POSSESS ANY
13 FIREARMS OR AMMUNITION FOR THE REST OF YOUR LIFE.

14 YOU ARE TO PROVIDE DNA SPECIMENS AND
15 SAMPLES TO THE L.A. COUNTY SHERIFF'S DEPARTMENT PURSUANT
16 TO PENAL CODE SECTION 296. WILLFUL REFUSAL TO PROVIDE
17 SUCH SPECIMENS AND SAMPLES IS A CRIME.

18 PEOPLE'S MOTION AS TO REMAINING COUNTS AND
19 ALLEGATIONS?

20 MR. URGO: MOVE TO DISMISS.

21 THE COURT: GRANTED.

22 THE DEFENDANT IS REMANDED TO THE CUSTODY OF
23 THE SHERIFF FOR TRANSPORTATION TO THE DEPARTMENT OF
24 CORRECTIONS.

25

26 (PROCEEDINGS WERE CONCLUDED.)

27

28 (THE NEXT PAGE NUMBER IS 301.)

000082

FELONY ABSTRACT OF JUDGMENT - DETERMINATE
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM
 (Not to be used for multiple count convictions or for 1/3 consecutive sentences)

CR-290.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES POMONA EAST DISTRICT		FILED Superior Court of California County of Los Angeles JAN 19 2017 Sheri R. Carter, Executive Officer/Clerk By: <i>Jennifer Ramirez</i> Deputy	
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT: EDGAR ARELLANO AKA: CIN. NO. A19016550 BOOKING NO. 1657787	DOB: 04-15-74	CASE NUMBER: KA112598-01	
<input checked="" type="checkbox"/> FELONY ABSTRACT OF JUDGMENT <input checked="" type="checkbox"/> PRISON COMMITMENT <input type="checkbox"/> COUNTY JAIL COMMITMENT <input type="checkbox"/> AMENDED ABSTRACT			
DATE OF HEARING: 01-13-17	DEPT. NO. EAF	JUDGE: JACK P. HUNT	
CLERK OF COURT: ELIZABETH CHAVEZ	REPORTER: JACQUELINE HALL	PROBATION NO. OR PROBATION OFFICER: X-1729185	<input checked="" type="checkbox"/> IMMEDIATE SENTENCING
COUNSEL FOR PEOPLE: BRANDY CHASE	COUNSEL FOR DEFENDANT: TAMELA CASH-CURRY P.D.	<input checked="" type="checkbox"/> APPOINTED	

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO/DATE/YEAR)	CONVICTED BY			TERM (L/M/D)	SERIOUS FELONY	VIOLENT FELONY	TIME IMPOSED (YRS/MOS)
						JURY	COURT	PLEA				
01	PC	459	BURGLARY, 1ST DEGREE	2016	01-13-17			X	U	X		12 0

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
667(A)(1) PC	5 YEARS	667(A)(1) PC	5 YEARS			10 0

4. Defendant sentenced: ☒ to county jail per PC 1170(h)(1) or (2); ☒ per PC 867(b)-(i) or PC 1170.12 (strike prior) ☒ to prison per PC 1170(a) or 1170(h)(3) due to ☒ current or prior serious or violent felony ☐ PC 280 or ☐ PC 186.11 enhancement. ☐ PC 1170(e)(3). Pre-confinement credits equal or exceed time imposed. ☐ Defendant ordered to report to local parole or probation office upon release.

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

Restitution Fine(s): \$300 per PC 1202.4 (b) forthwith per PC 2085.5 If prison commitment: \$300 per PC 1202.45 suspended unless parole is revoked. ☐ per PC 1202.44 is now due, probation having been revoked.

Restitution per PC 1202.4 (f): ☐ \$ ☐ Amount to be determined to ☐ victim(s) ☐ Restitution Fund. ☐ Victim name(s), if known, and amount breakdown in item 8, below. ☐ Victim name(s) in probation officer's report.

Fine(s): \$10.00 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.

☒ Court Operations Assess. \$ 40.00 per PC 1465.8 ☒ Conviction Assess. 30.00 per GC 70373 ☒ Other: \$ 2.00 per (specify): 1465.7

6. TESTING: ☐ a. ☐ Compliance with PC 296 verified. ☐ b. ☐ AIDS per PC 1202.1 ☐ c. ☒ other (specify): DNA PC 296

7. IMMEDIATE SENTENCING: ☐ Probation to prepare and submit a post sentence report to CDCR per PC 1203c. Def's Race / National Origin: ☐

8. Other orders (specify): Do not own use/possess dangerous/deadly weapons. Along with fine & surcharge the deft is to also pay PA \$29 total fine.

9. TOTAL TIME IMPOSED: \$41.00: Fines/fees in this case are to be collected by the Dept. of Corrections. ☐ 22 ☐ 03 ☐ 31

10. ☒ MANDATORY SUPERVISION: Execution of a portion of the total jail time imposed in item 9 is suspended and deemed a period of mandatory supervision under PC 1170(h)(5)(B) as follows: Suspended portion: ☐ Served forthwith: ☐

11. ☐ This sentence is to run concurrent with (specify): ☐ 12. Registration Required: ☒ per (specify code section):

13. Execution of sentence 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):

DATE SENTENCE PRONOUNCED	CREDIT FOR TIME SPENT IN CUSTODY TOTAL DAYS	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS	TIME SERVED IN STATE INSTITUTION
01-13-17	274	239	35 <input type="checkbox"/> 2833 <input type="checkbox"/> 2933.1 <input type="checkbox"/> 4019	<input type="checkbox"/> STATE INSTITUTION <input type="checkbox"/> CCR <input type="checkbox"/>

15. 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):

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.
 DEPUTY SIGNATURE: *JENNIFER RAMIREZ* DATE: 01-19-17

This form is prescribed under PC 11136 to satisfy the requirements of PC 11133. Attachments may be used but must be referred to in this document. Page 1 of 1

Form Adopted for Mandatory Use Judicial Council of California CR-290.1 (Rev. July 1, 2012)

FELONY ABSTRACT OF JUDGMENT - DETERMINATE
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM

(APPENDIX - B)

APPENDIX

C