Filed 5/28/20 P. v. Shelton CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. RANDALL ALEXANDER SHELTON, Defendant and Appellant.	B299376 (Los Angeles County Super. Ct. No. GA093524)

APPEAL from an order of the Superior Court of Los Angeles County, Sean D. Coen, Judge. Affirmed.

Linda L. Gordon, 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, Assistant Attorney General, Steven D. Matthews and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

In 2014, the trial court sentenced defendant and appellant Randall Alexander Shelton to 10 years in prison, but suspended the execution of the sentence and placed Shelton on probation. The suspended sentence included five 1-year enhancements under Penal Code[1] section 667.5, subdivision (b) for so-called "prison-prior" felonies. Almost five years later, the trial court found Shelton in violation of the terms of his probation. The court reinstated the suspended sentence, but reduced it by three years because three of the enhancements under section 667.5, subdivision (b) had been imposed in error.

While Shelton's probation revocation was pending on appeal, the Legislature enacted Senate Bill No. 136 (Stats. 2019, ch. 590, § 1, eff. Jan. 1, 2020), which eliminated section 667.5, subdivision (b) enhancements for defendants who, like Shelton, have not committed sexually violent offenses. Shelton contends that under the new law, the remaining two enhancements must be struck from his sentence. We disagree and affirm. Senate Bill No. 136 does not apply to Shelton's case because the judgment against him was final before the law became effective.

FACTS AND PROCEEDINGS BELOW

On September 11, 2014, Shelton pleaded no contest to (counts 1 and 2) possession of a firearm by a felon (§ 29800, subd. (a)(1)), (count 3) possession of ammunition by a person prohibited from owning or possessing a firearm (§ 30305, subd. (a)(1)), and (count 4) unlawful driving or taking of a vehicle. (Veh. Code, § 10851, subd. (a).) Shelton also admitted that he had suffered five prior convictions for felonies to which

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[1] Unless otherwise specified, subsequent statutory references are to the Penal Code.

one-year enhancements under section 667.5, subdivision (b) applied.

The trial court imposed an aggregate sentence of 10 years in prison, but suspended the execution of the sentence pending the completion of probation. The sentence consisted of the high term of three years for count 1, plus consecutive terms of eight months, or one-third the middle term, for each of counts 2, 3, and 4. In addition, the court imposed five 1-year enhancements under section 667.5, subdivision (b) to be served consecutively. The court placed Shelton on five years of formal felony probation and ordered him to serve 180 days in county jail.

On February 15, 2019, Los Angeles County Sheriff's deputies searched a car Shelton was traveling in and discovered a handgun. After a contested hearing, the trial court found Shelton in violation of the terms of his probation for possessing the gun.

Shelton argued that the trial court could not impose the prior suspended sentence in full because it included components unauthorized by law. In particular, Shelton argued that three of the five enhancements under section 667.5, subdivision (b) were invalid. In one instance, Shelton had received two enhancements based on a single prison commitment, and in two other instances, the convictions were not for felonies for which Shelton served prison sentences. The trial court agreed and removed three enhancements from Shelton's sentence. The trial court then imposed the remainder of the previously suspended sentence, for a total term of seven years.

DISCUSSION

Shelton contends we must strike the remaining two section 667.5, subdivision (b) enhancements from his sentence. According to Shelton, the judgment against him was not final at the time the Legislature enacted Senate Bill No. 136, which eliminated enhancements under section 667.5, subdivision (b) for offenses like his. He argues that the new law therefore applies retroactively to him. We disagree. The judgment against Shelton became final before the new law came into effect, and the trial court's finding that part of his sentence was unauthorized does not change the status of the remainder of his sentence.

Senate Bill No. 136, which the Governor signed into law on October 8, 2019, and which became effective January 1, 2020, limits the application of enhancements under section 667.5, subdivision (b). Prior to the new law's enactment, a defendant who was convicted of a felony was subject to a one-year enhancement under section 667.5, subdivision (b) for each separate prison term he had previously served for committing a felony.[2] Under the new law, the enhancement applies only if the defendant served a prior prison term "for a sexually violent offense as defined in subdivision (b) of [s]ection 6600 of the Welfare and Institutions Code." (§ 667.5, subd. (b).)

Senate Bill No. 136 applies retroactively to defendants whose convictions were not final at the time the law became effective. (*People v. Lopez* (2019) 42 Cal.App.5th 337, 341–342;

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[2] The enhancement does not apply if the defendant has been free from prison custody for at least five consecutive years following the term of imprisonment without committing another felony. (*People v. Baldwin* (2018) 30 Cal.App.5th 648, 654.) This exception is not applicable to Shelton.

People v. Winn (2020) 44 Cal.App.5th 859, 872–873 (*Winn*).) As the court explained in *Winn*, "[g]enerally, a statute applies prospectively unless otherwise stated in the language of the statute, or when retroactive application is clearly indicated by legislative intent. (*People v. Brown* (2012) 54 Cal.4th 314, 319–320 . . . .) However, '[w]hen the Legislature has amended a statute to reduce the punishment for a particular criminal offense, we will assume, absent evidence to the contrary, that the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute's operative date.' (*Id.* at p. 323, . . . , citing *In re Estrada* (1965) 63 Cal.2d 740 . . . .) By eliminating the one-year enhancement for prior prison terms that were not imposed for sexually violent offenses, the newly amended section reduces the punishment for such offenses." (*Winn*, *supra*, 44 Cal.App.5th at p. 872.) The Legislature did not indicate otherwise, so we infer that Senate Bill No. 136 applies retroactively. (See *Winn*, *supra*, at p. 872.)

One of Shelton's enhancements was based on a conviction for pimping (§ 266h), and the other was for obstructing or resisting an executive officer from performing his or her duties (§ 69). Neither of these is a sexually violent offense. (See Welf. & Inst. Code, § 6600.) The sole remaining question, then, is whether the judgment against Shelton was final as of January 1, 2020, when Senate Bill No. 136 became effective.

We conclude that the judgment in this case was final, and Shelton is not entitled to the benefit of Senate Bill No. 136, because of the manner in which the trial court originally ordered probation. When a trial court places a defendant on probation, it may either "suspend[ ] the imposition of a sentence or impos[e] a sentence and suspend[ ] its execution." (*People v. Segura*

(2008) 44 Cal.4th 921, 932.) This apparently small distinction is significant because the " ' "sentence" is the judgment in a criminal action [citations]; it is the declaration to the defendant of his disposition or punishment once his criminal guilt has been ascertained.' " (*People v. Wilcox* (2013) 217 Cal.App.4th 618, 625.) If the trial court suspends proceedings and grants the defendant probation without imposing a sentence, "there is no 'judgment of conviction.' " (*People v. McKenzie* (2020) 9 Cal.5th 40, 46.) If there is no final judgment against the defendant and the Legislature enacts an ameliorative statute during a defendant's probationary period, a defendant is entitled to the benefit of the new law if his probation is later revoked. (*Id.* at pp. 45–46.)

On the other hand, if the trial court imposes a sentence but suspends its execution pending the successful completion of probation, the sentence, albeit unexecuted, still constitutes a judgment. (*People v. Mora* (2013) 214 Cal.App.4th 1477, 1482 (*Mora*).) If the defendant does not file an appeal within the allotted time, "the sentence becomes final and unappealable." (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421; accord, *People v. Martinez* (2015) 240 Cal.App.4th 1006, 1011–1012 (*Martinez*).) If the defendant's probation is later revoked, " '[t]he revocation of the suspension of execution of the judgment brings the former judgment into full force and effect.' " (*People v. Howard* (1997) 16 Cal.4th 1081, 1087.) Because the imposition of a sentence constitutes a final judgment, "[o]n revocation of probation, if the court previously had imposed sentence, the sentencing judge must order that exact sentence into effect." (*Id.* at p. 1088; accord, *Mora*, *supra*, 214 Cal.App.4th at p. 1482 ["the trial court does not have jurisdiction to modify or change

the final judgment and is required to order that judgment into execution"]; § 1203.2, subd. (c).)

This case belongs to the second category. The trial court imposed a sentence but stayed its execution pending probation. When the time for filing an appeal passed, the judgment became final, and Shelton could no longer benefit from changes in the law such as Senate Bill No. 136.

Shelton argues that he is nevertheless entitled to relief under an exception to the rule: If the original sentence that the court imposed and stayed pending probation "was an unauthorized sentence, the trial court can order execution of the correct sentence." (*In re Renfrow* (2008) 164 Cal.App.4th 1251, 1253.) This is an aspect of the court's authority to correct an unauthorized sentence at any time. (See *id.* at p. 1256.)

We agree with Shelton that the trial court acted under this authority when it struck the three erroneous enhancements and ordered the execution of the sentence. It does not follow, however, that when the court did so, the judgment against Shelton was no longer final. When a trial court imposes a sentence that is unauthorized in part, only the unauthorized portion is void. (See *In re Sandel* (1966) 64 Cal.2d 412, 417–418.) The remainder of the judgment remains in effect. (*Ibid.*; *In re Tinsley* (1960) 178 Cal.App.2d 15, 17.)

In this case, the two remaining enhancements under section 667.5, subdivision (b) were valid at the time of the original sentencing. The court lacks jurisdiction to remove those enhancements "even if, during the probationary period, circumstances change so that the sentence would be unauthorized if it were being imposed in the first instance." (*Martinez*, *supra*, 240 Cal.App.4th at p. 1017.) The fact that

the court removed three unauthorized enhancements from Shelton's sentence does not change the status of the remaining two enhancements.

DISPOSITION

The trial court's order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.