

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SOLOMON MARTIN RUIZ,

Defendant and Appellant.

E072303

(Super.Ct.Nos. SWF022015 &
SWF1300770)

OPINION

APPEAL from the Superior Court of Riverside County. Mark A. Mandio, Judge.
Affirmed.

Kenneth H. Nordin, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Five years after defendant and appellant Solomon Martin Ruiz pled guilty pursuant to a plea bargain and was sentenced, the Secretary of the California Department

of Corrections and Rehabilitation (CDCR) requested, pursuant to Penal Code section 1170, subdivision (d)(1) (section 1170(d)(1)), that the trial court consider resentencing him. The trial court ultimately declined to do so. On appeal, Ruiz contends only that the trial court erroneously believed that its hands were tied because Ruiz's sentence resulted from a plea bargain. We affirm because the record shows the trial court knew it was not precluded from resentencing Ruiz.

The specific details of Ruiz's criminal activity are not relevant here. We only note that the parties agree Ruiz potentially faced the death penalty.

In 2013, pursuant to a plea bargain, Ruiz was sentenced in two separate cases to a total of 45 years.

Five years later, according to the People, "the Secretary for the California Department of Corrections and Rehabilitation submitted a letter to the parties and the court asking the court to consider resentencing defendant under the authority of . . . section 1170, [(d)(1)]." (The letter itself does not appear in the record.)

Section 1170(d)(1) provides that, "at any time upon the recommendation of the secretary," the court may recall a defendant's original sentence and resentence him. It provides that in resentencing, the court may consider postconviction factors, such as the inmate's disciplinary record and risk for future violence. Section 1170(d)(1) also states that the resentencing court "may reduce a defendant's term of imprisonment and modify the judgment, *including a judgment entered after a plea agreement*, if it is in the interest of justice." (Italics added.) Both the provision allowing a plea agreement sentence to be

altered and the provision allowing a court to consider postconviction factors were added in 2018. (Stats. 2018, ch. 36, § 17.)

In January 2019, at the end of a hearing in which a character witness testified on Ruiz's behalf, the trial court declined to recall Ruiz's original sentence and resentence him. It stated: "[I]n this particular case, I'm not going to reconsider the sentence, okay, because it was a plea bargain. Because substantial charges were dropped as a result of this plea bargain." The trial court added: "I do not think that I have sufficient information to make a good decision of whether any reduction in sentence would be in the interest of justice without hearing from the victims, without hearing from the prison authorities."

On appeal, Ruiz's sole contention is that "[c]ontrary to the court's ruling . . . trial courts have discretion to reduce defendants' sentences even when convictions result from plea bargains that specify a sentence." Ruiz notes that section 1170(d)(1) was amended in 2018 and that "[t]he trial court's lack of awareness of the discretion that the amendment of [section 1170(d)(1)] gave it" violates his due process.

The record makes clear, however, that the trial court was aware of the change in law. At the beginning of the hearing, Ruiz informed the trial court that section 1170(d)(1), as amended, now allowed the court to "listen to and hear argument on [an] agreed-upon disposition as opposed to one that is a sentencing that the [c]ourt came to after a jury trial and a conviction." The reporter's transcript shows that a discussion about the change in law followed, driven in part by the court's desire to confirm that its

version of section 1170(d)(1) was current. Following a recess in which counsel obtained a copy of the updated Penal Code, the new provisions of section 1170(d)(1) involving plea agreements and post conviction factors were read into the record. Later, in declining to recall and resentencing, the trial court stated, “[i]t does appear to me the language that you read indicates that the [c]ourt can reconsider a plea bargain.”

This record shows that the trial court was fully aware that it had the ability to recall Ruiz’s sentence notwithstanding the fact that it resulted from a plea bargain. Read in context of the record, the trial court’s statement that it would not recall Ruiz’s sentence “because it was a plea bargain” does not demonstrate a lack of awareness about section 1170(d)(1) as amended. Rather, it appears that the statement was another way for the court to state its belief that the interests of justice would not be served if Ruiz’s sentence were recalled. First, the court’s view that “substantial charges were dropped” in the plea bargain is a reasonable basis for the court to conclude that further leniency was not in the interest of justice. Second, as to all the potential charges, the trial court put emphasis not on the fact of a plea bargain, but on making a decision in Ruiz’s favor without allowing Ruiz’s victims or their families to weigh in. This also was reasonable. As the trial court noted: “There’s the other side of it, which is the victim’s side; right? I don’t think it’s fair to reduce a sentence without at least hearing from people that might be heard from, and their points of view, for me to even really determine whether it’s in the interest of justice.” The trial court’s reference to a plea bargain here was thus not meant to state that

the court's hands were tied, but rather that it felt that there were others, impacted by the "substantial charges" in Ruiz's cases, who needed to be heard from.

Two ancillary issues merit discussion. First, the parties spend much of their briefs debating whether Ruiz, as opposed to CDCR, may request recall and resentencing under section 1170(d)(1). This stems from the fact that prior to the 2019 hearing, Ruiz filed a formal request for resentencing under section 1170(d)(1), as well as the fact that section 1170(d)(1) does not *expressly* allow a defendant to do so. We need not decide this issue because the People acknowledged that the Secretary of the CDCR, who is undisputedly allowed to request recall and resentencing, made its own request. The fact that the court appears to have formally denied Ruiz's request is insignificant. In any event, for the reasons discussed above, Ruiz's appeal fails on the merits whether or not it also fails for lack of standing.

Second, the record contains two letters from CDCR addressed to the trial court stating that the abstract of judgment or minute order in each of Ruiz's cases may contain sentencing errors. They state, for example, that Ruiz was sentenced on the full term of some consecutive counts even though the Penal Code provides that only one-third of those terms should have been imposed. Ruiz requested that the trial court "follow the recommendation of [CDCR] as to the number calculating of his actual sentence" but does not make a similar request on appeal. For completeness and clarity, we briefly note that even if Ruiz had requested we follow CDCR's recommendation to reduce based on sentencing errors, we would not do so. "When a defendant maintains that the trial court's

sentence violates rules which would have required the imposition of a more lenient sentence, yet the defendant avoided a potentially harsher sentence by entering into the plea bargain, it may be implied that the defendant waived any rights under such rules by choosing to accept the plea bargain.” (*People v. Couch* (1996) 48 Cal.App.4th 1053, 1057.)

Because the record shows that the trial court was fully aware of the scope of its discretion, we reject Ruiz’s sole contention and affirm.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAPHAEL
J.

We concur:

CODRINGTON
Acting P. J.

FIELDS
J.