

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

RICARDO EUGENE SIMS,

Defendant and Appellant.

E080271

(Super.Ct.No. RIF1205971)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Dismissed.

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

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney Generals, Heather B. Arambarri and Steve Oetting, Deputy Attorney Generals, for Plaintiff and Respondent.

In 2013 defendant and appellant Ricardo Eugene Sims was sentenced to 31 years for his conviction of second degree robbery, the special allegation that he personally used a firearm, and for having suffered two prior serious felony convictions. In addition, as part of his sentence, defendant received a one year sentence for having served a prior prison term within the meaning of Penal Code<sup>1</sup> section 667.5, subdivision (b). On January 1, 2022, Senate Bill No. 483 (Stats. 2021, ch. 728, §§ 3; Stats 2022, ch. 58, §§ 12 eff. June 30, 2022 (SB 483), went into effect invalidating all prior-prison-term enhancements imposed prior to 2020, except for some offenses not relevant here, that were imposed pursuant to section 667.5, subdivision (b).

On October 25, 2022, defendant filed his “MOTION FOR RESENTENCING UNDER [SB 483] AND SENATE BILL 136 AMENDED” (motion). He contended that his one year enhancement imposed pursuant to section 667.5, subdivision (b), must be stricken and he was entitled to a full resentencing. The trial court summarily denied the motion.

Defendant contends the trial court erred by summarily denying his motion without appointing him counsel or conducting a resentencing hearing in his presence. The matter should be remanded to the trial court in order for it to conduct a hearing on his motion.

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

## PROCEDURAL HISTORY<sup>2</sup>

Defendant apparently entered into a plea agreement in which he admitted to a charge of second degree robbery (§ 211).<sup>3</sup> In addition, he admitted to personally using a firearm during the commission of the robbery within the meaning of section 12022.53, subdivision (b). He also admitted to having served one prior prison term (§ 667.5, subd. (b)), and having suffered two prior serious felony convictions (§ 667, subd. (a)).

Defendant was sentenced to 31 years on July 9, 2013, which consisted of 10 years for the robbery plus 10 years for the weapons-use enhancement; five years for each of the section 667, subdivision (a) priors; and one year for the section 667.5, subdivision (b), prior-prison-term conviction.

On September 8, 2022, defendant filed the motion. He insisted that based on the recent enactment of SB 483, the one year enhancement imposed pursuant to section 667.5, subdivision (b), must be stricken and he was entitled to be resentenced. The motion was summarily denied by the trial court on October 6, 2022; the order was filed on October 25, 2022.

---

<sup>2</sup> The record on appeal does not contain the facts of the underlying case, but they are not relevant to the issues raised on appeal.

<sup>3</sup> The plea agreement has not been made part of the record on appeal. Defendant was charged by the Riverside County District Attorney in an information filed on January 3, 2013. He was sentenced on July 9, 2013. Hence, it is clear defendant entered into some type of plea agreement.

## DISCUSSION

Defendant contends the trial court erred by denying his motion to strike the one year sentence for his prior-prison-term conviction pursuant to section 667.5, subdivision (b), and he is entitled to a full resentencing. The People counter that although the trial court had jurisdiction to review the motion, defendant is not entitled to jump the line and have his case decided before other defendants. As such, although there are no grounds to dismiss the appeal, the denial of the motion should be affirmed as defendant has failed to show that he is entitled to be resentenced at this time.

At the time the trial court sentenced defendant on July 9, 2013, section 667.5, subdivision (b), required trial courts to impose a one year sentence enhancement for each true finding on an allegation the defendant had served a separate prior prison term and had not remained free from custody for at least five years. (Former § 667.5, subd. (b).) Senate Bill No. 483 added section 1171.1 to the Penal Code, effective June 30, 2022, which has since been renumbered to section 1172.75. Section 1172.75, subdivision (a), provides that “[a]ny sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense . . . is legally invalid.” (§ 1172.75, subd. (a).) Subdivision (b)(1) of section 1172.75 puts the onus on the California Department of Corrections and Rehabilitation (CDCR) to identify those individuals whose sentence includes an enhancement pursuant to section 667.5, subdivision (b). The statute sets forth specific dates for identifying these individuals: “By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a

sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first;” and, subdivision (b)(2) provides, “By July 1, 2022, for all other individuals.”

Once identified, the trial court is tasked with reviewing the records and determining whether resentencing is required. (§ 1172.75, subd. (c).) For those individuals who are not currently serving a sentence based on the enhancement, the trial court shall complete the review of the sentence and complete resentencing by December 31, 2023. (§ 1172.75, subd. (c)(2).) At the resentencing, the trial court shall appoint counsel and conduct a hearing unless waived by the defendant. (§ 1172.75, subds. (5), (e).) Based on the foregoing, the Legislature has created an orderly process by which a defendant, who had his or her sentence enhanced pursuant to section 667.5, subdivision (b), is entitled to be resentenced.

We conclude that this court lacks jurisdiction to consider defendant’s appeal of the trial court’s order denying the motion. In *In re G.C.* (2020) 8 Cal.5th 1119, the California Supreme Court clarified that the longstanding rule an unauthorized sentence can be corrected at any time is an exception to the waiver doctrine, but not to the rule that the court must first have jurisdiction. (*Id.* at p. 1129.) “ ‘[O]nce a judgment is rendered and execution of the sentence has begun, the trial court does not have jurisdiction to vacate or modify the sentence.’ ” (*People v. King* (2022) 77 Cal.App.5th 629, 634.) The *King* court further stated that 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. [Citation.]

Thus, a defendant who wishes to challenge a sentence as unlawful after the defendant's conviction is final and after the defendant has begun serving the sentence must do more than simply file a motion in the trial court making an allegation that the sentence is legally infirm." (*Id.* at p. 640.)

In *People v. Burgess* (2022) 86 Cal.App.5th 375 (*Burgess*),<sup>4</sup> the Court of Appeal considered the defendant's in propria persona motion for relief from his prior-prison-term enhancement, which was brought 12 years after he was sentenced to 30 years in prison. (*Id.* at pp. 378-379.) The court agreed with the analysis in *King* and concluded that because the trial court lacked jurisdiction to consider the defendant's motion, its ruling was not appealable. (*Burgess*, at pp. 381-382.) The court concluded, "The trial court lacked jurisdiction to adjudicate Burgess' motion for resentencing, and we lack jurisdiction over his appeal from the motion's denial." (*Id.* at p. 382) The court also concluded that defendant's claim also failed on its merits because "section 1172.75 provides deadlines for the CDCR Secretary and the courts to comply with its provisions" in order to prioritize those individuals who are currently serving time on the prior-prison-term enhancement, and by staggering deadlines to minimize the impact on the trial courts' workload. (*Id.* at pp. 382-383.) The court found that "[the defendant] was sentenced in 2010 to 30 years in prison, which consisted of a nine-year term for robbery, a 20-year consecutive term for a firearm enhancement, and a one year consecutive term

---

<sup>4</sup> In his opening brief filed February 21, 2023, defendant stated that a petition for review before the California Supreme Court was pending for *Burgess*. The California Supreme Court denied review on March 15, 2023.

for the prior-prison-term enhancement. He has not yet begun serving the now invalid prior-prison-term enhancement and is thus not eligible for priority in recall and resentencing. Remanding this case for resentencing at this juncture would undermine the purpose of the staggered statutory deadlines and could allow [the defendant] to obtain relief before others who are currently serving time on legally invalid enhancements. [The defendant] is assured by the terms of the statute to be resentenced by December 31, 2023, well before he will begin to serve any time for the prior-prison-term enhancement. He has made no showing as to why this timing is inadequate in light of his overall sentence. The court did not err in denying his request to vacate and resentence.” (*Id.* at p. 383.)

This case is nearly identical to *Burgess*. Here, the trial court sentenced defendant to 31 years commencing on July 9, 2013. He had not yet finished serving the term of 20 years on count 1 and the 10 years on the section 667, subdivision (a), enhancements at the time he filed the motion on September 8, 2022. As of the time defendant filed his motion in September 2022, the CDCR would have been required to identify him as a person subject to this remedial scheme. However, the trial court has until December 2023 to complete defendant’s resentencing. Defendant is assured by the terms of the statute his sentence will be resolved well before he serves any time on the prior-prison-term enhancement. As in *Burgess*, we find the trial court lacked jurisdiction to hear the motion, and even if we were to consider the merits, defendant has not shown that he is entitled to be resentenced prior to other individuals who are awaiting resentencing.

The People state that since defendant filed his motion after July 1, 2022, the date by which the CDCR had time to send records to the trial court identifying those individuals who had a sentence that included a section 667.5, subdivision (b), prison prior, the trial court in fact has jurisdiction. The People contend that this court should affirm the denial of the motion on the merits based on defendant failing to show why he is entitled to jump the line for resentencing. We see no reason to depart from *Burgess* even though defendant has likely been identified for resentencing. As concluded in *Burgess*, “[S]ection 1172.75 simply does not contemplate resentencing relief initiated by any individual defendant’s petition or motion.” (*Burgess, supra*, 86 Cal.App.5th at p. 384.) We see no reason to differentiate this case based on the July 1, 2022, deadline passing as there is no statutory authorization to file such a motion. As stated in *King*, “[a] motion is not an independent remedy, but must be attached to some ongoing action.” (*King, supra*, 77 Cal.App.5th at p. 640.) Although records have presumably been sent to the trial court for it to review to determine if defendant is entitled to resentencing, at this point, the trial court has no jurisdiction to review this premature unauthorized motion.

Defendant contends that this court should find that *Burgess* was wrongly decided. We decline to do so. Defendant argues that no language in section 1172.75 precludes individuals from filing motions such as the one in this case, that *Burgess* misinterpreted the legislative history as the Legislature never prohibited such motions; and the trial court upon receiving such motions can create its own priority for cases. Defendant insists he complied with section 1172.75 and he should have been immediately appointed counsel and granted a resentencing hearing. Similar arguments were rejected in *Burgess*.



(*Burgess, supra*, 86 Cal.App.5th at pp. 383-384.) The *Burgess* court found that although there was no “express prohibition against a defendant from seeking relief on his or her own, he disregards that the Legislature provided an express system for the orderly implementation of relief for affected defendants to receive the benefit of the amended law in a timely manner.” It concluded, “[S]ection 1172.75 simply does not contemplate resentencing relief initiated by any individual defendant’s petition or motion.” (*Id.* at p. 384.)

Defendant is essentially arguing that despite the clear language in section 1172.75 setting forth an orderly process for resentencing, individuals should be entitled to file motions at any time, regardless of whether they are serving their sentence on the prior-prison-term enhancement, and be immediately afforded counsel and resentencing. He insists that the trial court can set up its own timeline for addressing these matters. If this court were to find that such a motion for resentencing was allowed, it would essentially render the deadlines in section 1172.75 surplusage. This court would essentially ignore the directives of the statute. We decline to interpret the statute in this manner.

For individuals like defendant who are not currently serving time for their prior-prison-term enhancement, the sentencing court has until December 31, 2023, to complete resentencing for those individuals. Defendant will be afforded resentencing. Based on *Burgess* and the language of section 1172.75, defendant’s motion requesting resentencing was procedurally improper and properly denied by the trial court.

**DISPOSITION**

Defendant's appeal of the denial of his motion is dismissed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER  
J.

We concur:

McKINSTER  
Acting P. J.

FIELDS  
J.