S271057

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. RICKY PRUDHOLME, Defendant and Petitioner.	Case No. _____ Court of Appeal No. E076007 Superior Court No. FWV18004340

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY

Honorable KYLE S. BRODIE, Judge Presiding

PETITIONER'S PETITION FOR REVIEW

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE ABOVE-ENTITLED COURT.

Petitioner-Petitioner respectfully petitions for this court's review of a decision of the Fourth Appellate District, which vacated the sentence and remanded the matter to address the impact of Assembly Bill 1950 on petitioner's no contest plea to a single count second degree burglary. The opinion was not certified for publication. A copy of the opinion of the court of appeal, dated August 26, 2021, is attached as Appendix A.

INTRODUCTION

Petitioner entered into a no contest plea to a single count of felony second degree burglary and was placed on a three-year grant of probation. However, before his case was final, Assembly Bill No. 1950 went into effect reducing the permissible term of probation for convictions like petitioner's to two years. The parties agreed the ameliorative effects of Assembly Bill No. 1950 applied to petitioner. The disputed issue became deciphering the appropriate remedy. Currently, there exist conflicting appellate court decisions as to how to proceed in this situation. (Compare *People v. Sims* (2021) 59 Cal.App.5th 943, 964 [remanding to the trial court for resentencing] with *People v. Quinn* (2021) 59 Cal.App.5th 874, 885 [reducing the term of

probation].) Petitioner maintains the proper remedy is to simply reduce the probation term absent a remand.

However, citing the reasoning in both *People v. Stamps* and *People v. Hernandez* (2020) 55 Cal.App.5th 942, 959 (review granted Jan. 27, 2021, S265739, the Court of Appeal erroneously remanded the matter to the trial court to permit the People an opportunity to withdraw from the plea agreement. These issues are currently pending review before this Court necessitating review in this case.

ISSUES PRESENTED

1. Did the Court of Appeal err when it ordered this matter remanded to allow the people to withdraw from the plea agreement and to obtain the trial court's approval after determining petitioner's term of probation must be reduced from three years to two years?

NECESSITY FOR REVIEW

Review is necessary in this case to settle important questions of law and to secure uniformity of decision and practice among the Courts of Appeal (Cal. Rules of Court, rule 8.500(b)(1). A case regarding the main issue here- If a defendant's term of probation is reduced under Assembly Bill No. 1950, does the remainder of the sentence agreed to under a plea agreement remain intact or must the case be remanded to allow the People

to withdraw from the plea agreement and to obtain the trial court's approval (see *People v. Stamps* (2020) 9 Cal.5th 685)? – is currently pending before this Court in *People v. Stewart* (2021) 62 Cal.App.5th 1065, review granted June 30, 2021, S268787. Similar issues involving the impact of Senate Bill 136 on negotiated plea agreements are also pending before this Court in *People v. Hernandez* (2020) 55 Cal.App.5th 942, review granted Jan. 27, 2021, S265739; *People v. Griffin* (2020) 57 Cal.App.5th 1088, review granted Feb.17, 2021, S266521; *People v. Joaquin* (2020) 58 Cal.App.5th 173, review granted Feb. 24, 2021, S266594; and *People v. France* (2020) 58 Cal.App.5th 714, review granted Feb. 24, 2021, S266771.

STATEMENT OF THE CASE

On December 10, 2018, an information was filed charging petitioner in count 1 with second degree robbery [Penal Code section 211]. (CT: 85-87.)[1]

On April 5, 2019, defense counsel declared a doubt as to petitioner's competence pursuant to Penal Code section 1368. (CT: 126, RT: 10-13.) On May 24, 2019, petitioner was found incompetent and criminal proceedings were suspended. (CT: 131; RT: 14.)

[1] "CT" refers to the Clerk's Transcript on appeal and "RT" refers to the reporter's transcript on appeal, and "SCT" refers to the Supplemental Clerk's Transcript on appeal in the above-entitled case.

On September 2, 2020, petitioner was found competent and criminal proceedings were reinstated. (CT: 190-191; RT: 79.) That same day, petitioner entered into a no contest plea as to an added count, count 2, that alleged felony second degree burglary pursuant to Penal Code section 459, subdivision (b). (CT: 190-191, 192-194; RT: 72-78.)

On October 14, 2020, petitioner was sentenced to three years of formal probation as a result of his plea. Count 1 was dismissed pursuant to the plea agreement. (SCT: 15; RT: 79-84.)

Petitioner filed an amended notice of appeal on November 16, 2020. The trial court denied petitioner's request for a certificate of probable cause. (SCT: 4.) In his appeal, petitioner argued that his term of probation must be reduced to two years under the ameliorative principles of Assembly Bill 1950. (AOB: 6-10.)

REASONS FOR GRANTING REVIEW

A. THE COURT OF APPEAL ERRED WHEN IT ORDERED THIS MATTER REMANDED TO ALLOW THE PEOPLE TO WITHDRAW FROM THE PLEA AGREEMENT AND TO OBTAIN THE TRIAL COURT'S APPROVAL AFTER DETERMINING PETITIONER'S TERM OF PROBATION MUST REDUCED TO TWO YEARS PURSUANT TO ASSEMBLY BILL 1950.

Review is necessary in this case since the Court of Appeal erroneously ordered this matter remanded after determining the petitioner's term of probation must be reduce to two years due to

a change in the law (Assembly Bill 1950). In making such error, the Court of Appeal relied on this Court's decision in *People v. Stamps, supra,* and the Fifth District Court of Appeal's decision in *People v. Hernandez, supra,* that is already pending review by this Court. (see opin. p. 8.) In *Hernandez,* the Fifth District Court of Appeal relied largely upon the language in *People v. Stamps* in finding that rather than simply vacated the terms imposed for petitioner's prison priors under the newly passed Senate Bill 136 after they were imposed as part of a negotiated plea, they should remand the matter to the trial court to permit the People the opportunity to withdraw from the plea deal. Here, the Court of Appeal relied upon the reasoning in *Hernandez* to find that, because petitioner's term of probation must be reduced to two years under the newly passed Assembly Bill 1950, the matter should be remanded to permit the People the same opportunities discussed in *Hernandez*. (see opin. pp. 8-10.) This was in error. Remand is unnecessary despite the decisions in *People v. Stamps, supra,* or *People v. Hernandez, supra.*

First and foremost, both *Stamps* and *Hernandez* involve the imposition of sentencing enhancements that are used to lengthen the time a criminal defendant spends in custody. The please at issue in those cases contemplated an amount of time *in custody* that was reduced by new laws, but nonetheless still possible to impose due to other counts or portions of the plea.

Once stricken in a particular case, the trial court lacks the ability to impose any additional custody time under these enhancements. This situation is decidedly different. This issue involves the term of probation that no longer exists. Indeed, it no longer exists because the Legislature concluded it was no longer necessary. Further, remand in this situation is unnecessary because, should the trial court deem it appropriate to modify a different term of probation or terminate probation, it retains the jurisdiction to do so absent any order from a reviewing court. (Pen. Code § 1203.3, subd. (a); *People v. Quinn* (2021) 59 Cal.App.5th 874, 885 & fn. 6.) Accordingly, petitioner's probation period should be reduced to two years absent a remand. (*People v. Quinn, supra,* 59 Cal.App.5th at p. 885.)

Second, it neither benefits the probationer nor the public to remand a case like this when the law mandates the reduction of the term of probation. A look into the legislative history of AB 1950 shows that both the Assembly and Senate Committees on Public Safety explained that proponents of this new law asserted in broad terms that shortening terms of probation is beneficial for society and probationers. For instance, the Senate Committee on Public Safety summarized a proponent's view that "probation supervision is most beneficial in the early part of a probation term" and shorter terms of probation "would enable probation officers to more effectively manage their caseloads." (Sen. Com.

on Public Safety, Rep. on Assem. Bill No. 1950 (2019-2020 Reg. Sess.) as amended June 10, 2020, p. 5.) Again, here, the Court of Appeal should have simply ordered the term of probation be reduced to two years to effectuate the clear purpose of this new law. Its failure to do so was error.

Moreover, when the Court of Appeal found remand appropriate, that remand should have been limited to the trial court deciding if the terms and conditions of probation are appropriate in light of the reduced term. Petitioner understands that, when discussing negotiated pleas and the impact of a new laws that modified or removed the ability to impose terms for enhancements that were part of those pleas, some reviewing courts found remand appropriate. (see e.g. *People v. Hernandez, supra,* 55 Cal.App.5th 942.) Again, this is not the case here. Since the Court of Appeal in this case relied largely on the reasoning *Hernandez* and this Court already granted review in *Hernandez,* review is also necessary here. I

Further, in discussing the decision in *Hernandez,* the Court of Appeal acknowledged that decision relied largely upon the language in *People v. Stamps* (2020) 9 Cal.5th 685 when it found that rather than simply vacated the term imposed for a criminal defendant's prison prior, the matter should be remanded to permit the People and the trial court the opportunity to withdraw from the plea deal. Yet, neither *Stamps* nor *Hernandez* is applicable here.

In *Stamps*, the defendant entered into a plea agreement for a specified prison term that included a prior serious felony enhancement under Penal Code section 667, subdivision (a). (*People v. Stamps*, *supra*, 9 Cal.5th at p. 692.) While pending appeal, Senate Bill No. 1393 went into effect, granting the trial court discretion to strike or dismiss a serious felony enhancement in furtherance of justice under Penal Code section 1385. Such discretion was previously unauthorized. (*Id.* at p. 692.) This Court found that this new law applied retroactively to that defendant's case because his appeal was not yet final. (*Id.* at p. 699.)

However, in so finding, this Court rejected the defendant's claim that his case should be "remand[ed] to the trial court to consider striking the serious felony enhancement while otherwise maintaining [his] plea agreement intact." (*People v. Stamps, supra*, 9 Cal.5th at p. 700.) This Court, when enacting Senate Bill No. 1393, the Legislature did not "intend[] to overturn long-standing law that a court cannot unilaterally modify an agreed-upon term [of a plea bargain] by striking portions of it under section 1385." (*Id.* at p. 701.) Further, this Court explained that "the remedy defendant seeks, to allow the court to strike the serious felony enhancement but otherwise retain the plea bargain, would frustrate the Legislature's intent to have section 1385 apply uniformly, regardless of the type of enhancement at issue, by granting the court a power it would otherwise lack for

any other enhancement." (*Id.* at p. 704.) This Court concluded that, while the defendant should be given the opportunity to *ask* the trial court to exercise its new discretion to strike the serious felony enhancement, the People should be allowed to withdraw from the plea bargain if the trial court indicates an inclination to exercise its discretion to strike the enhancement. (*Id.* at p. 707.)

Again, *Stamps* is inapplicable to this case. Notably, *Stamps* should not apply because appellant is differently situated than defendant Stamps. That is because Assembly Bill 1950 did not grant the trial court sentencing discretion it previously lacked. Rather, Assembly Bill 1950 mandated that felony probation for convictions like appellant's now be limited to two years. It did so based on the idea that two years is enough to serve the rehabilitative function of felony probation. This is not a matter of asking a trial court to exercise its newly vested judicial discretion. Indeed, it is the opposite. This new law removes the trial court's ability to grant longer than two years of probation for a conviction for a second-degree felony burglary, like petitioner's. In *Stamps*, the change in the law at issue, Senate Bill 1393, merely provided the trial court the discretion to strike or impose the serious felony prior. That serious felony prior could still be alleged and still be imposed. Here, petitioner could no longer suffer a three-year term of probation. Judicial discretion, like in *Stamps*, is not at issue here.

Moreover, the nature of this plea agreement, namely

appellant entering in an agreement for a term of probation, implies that the parties believed this conviction and a grant of probation were sufficient to serve the punitive and rehabilitative process. The legislative history of Assembly Bill 1950 indicates that this new law was enacted with the belief that a two-year period of supervision is sufficient to fulfill the rehabilitative function of probation. (see Assem. Com. on Public Safety, Analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.) as amended May 6, 2020, p. 6.) The new law does not permit the trial court discretion to impose a three-year term of probation. Since the parties already agreed probation was appropriate, this court should order the probation term reduced to two years absent a remand.

Finally, when ordering the remand in this case, the Court of Appeal failed to acknowledge the reasoning in *People v. Stewart* (2021) 62 Cal.App.5th 1065, review granted June 30, 2021, S268787. In *Stewart*, the First District Court of Appeal concluded a court could apply ameliorative changes in the law to bargained-for sentences unilaterally. In so finding, the *Stewart* Court acknowledged that *People v. Stamps, supra,* had previously held courts generally lack the authority to unilaterally modify a plea bargain. (*People v. Stewart, supra,* 62 Cal.App.5th at p. 1074.) But the *Stewart* Court pointed out a similar argument made by appellant in Appellant's Supplemental Brief, namely that "*Stamps* addressed a situation in which the new law gave

the trial court discretion to strike an enhancement but did not require it to do so.... *Stamps* therefore had no occasion to consider the effect on a plea bargain of retroactive application of a law through which the Legislature directly affected a plea bargain by rendering one of its terms invalid." (*Id.* at p. 1077.)

Significantly, the *Stewart* Court found the reasoning in *People v. France, supra,* more applicable to the changes wrought by Assembly Bill 1950. *France* states that "the mere fact that parties have entered into a plea agreement 'does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them' and 'requiring the parties' compliance with changes in the law made retroactive to them does not violate the terms of the pleas agreement." (*People v. France, supra,* 58 Cal.App.5th at p. 724 quoting *Doe v. Harris* (2013) 57 Cal.4th 64, 66, 73.) The significant determination is "whether a court makes a discretionary change to a plea bargain (as in *Stamps*) or the Legislature makes a change in the law that necessarily affects the bargain (as here)." (*People v. Stewart, supra,* 62 Cal.App.5th at p. 1078 citing *People v. France, supra,* 58 Cal.App.5th at p. 729, fn. 6.) The *Stewart* Court ultimately concluded that "Assembly Bill 1950, like the statute at issue in *France*, 'does not involve *Stamps*' repeated and carefully phrased concern with the "long-standing law that a court cannot unilaterally modify an agreed-upon term by striking portions of it under section 1385" ' but rather 'has a direct and conclusive effect

on the legality of existing sentences pursuant to [*In re*] *Estrada* [(1965) 63 Cal.2d 740].' " (*Stewart*, at p. 1078, italics omitted.)

Following the reasoning in *Stewart,* the proper remedy is to reduce appellant's probation to two years. However, in light of conflicting decisions among reviewing courts, review is necessary. (see e.g., *People v. Sims* (2021) 59 Cal.App.5th 943, 964 [remanding to the trial court for resentencing] with *People v. Quinn, supra,* 59 Cal.App.5th at p. 885 [reducing the term of probation absent a remand].)

CONCLUSION

For all the reasons set forth above, petitioner respectfully requests that this petition for review be granted.

Dated: September 27, 2021 _____

Attorney for Petitioner

CERTIFICATION OF WORD COUNT

Appellate counsel certifies in accordance with California Rules of Court, rule 8.204(c) that this brief contains approximately 3,225 words as calculated by the software in which it was written.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 27, 2021 _____

Attorney

PROOF OF SERVICE

I, ERICA GAMBALE, declare as follows:

I am an active member of the State Bar of California and am not a party to this cause. My electronic service address is egambale@cox.net and my business address is P.O. Box 2896, Mission Viejo, CA 92690. On September 27, 2021, I served the persons and/or entities listed below by the method listed. For those marked "Served Electronically," I transmitted a PDF version of PETITIONER'S PETITION FOR REVIEW by TrueFiling electronic service or by e-mail to the e-mail service address(es) provided below. Transmission occurred at approximately 9:30 a.m. For those marked "Served by Mail," I deposited in a mailbox regularly maintained by the United States Postal Service at Mission Viejo, CA a copy of the above document in a sealed envelope with postage fully prepaid, addressed as provided below.

Clerk of the Superior Court
Appeals Division
8303 Haven Avenue
Rancho Cucamonga, CA 91730

Ricky Prudholme
Appellant

I declare that I electronically served a copy of the above document to the Attorney General via TrueFiling at ADIEService@doj.ca.gov and to Appellate Defender's, Inc. via TrueFiling at eservice-court@adi-sandiego.com.

I further declare that I electronically served the San Bernardino County District's Attorney's Office at appellateservices@sbcda.org.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 27, 2021 in Mission Viejo, California.

/*s*/ Erica Gambale
Erica Gambale, SBN 214501
DECLARANT

APPENDIX A

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RICKY PRUDHOLME, Defendant and Appellant.	E076007 (Super.Ct.No. FWV18004340) OPINION

APPEAL from the Superior Court of San Bernardino County. Kyle S. Brodie, Judge. Reversed and remanded for resentencing.

Erica Gambale, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Elizabeth M. Kuchar, Deputy Attorneys General, for Plaintiff and Respondent

PROCEDURAL HISTORY

On December 10, 2018, an information charged defendant and appellant Ricky Prudholme with one count of second degree robbery under Penal Code section 211.[1,2] On April 5, 2019, defense counsel declared a doubt as to defendant's mental competence under section 1368. On May 24, 2019, the trial court found defendant to be incompetent and suspended the criminal proceedings.

On September 2, 2019, the trial court found defendant to be competent and reinstated the criminal proceedings. That same day, defendant pled no contest to an added count of felony second degree burglary under section 459, subdivision (b). The parties stipulated that the preliminary hearing transcript would serve as the factual basis for the plea.

On October 14, 2019, the trial court dismissed the robbery count and placed defendant on formal probation pursuant to the terms of the plea agreement.

On November 16, 2019, defendant filed an amended notice of appeal.

STATEMENT OF FACTS[3]

On November 22, 2018, employees of a trucking company observed defendant in a Chevrolet truck and two codefendants in a Ford truck loading boxes of merchandise

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[1] Two codefendants were charge in the information; they are not parties to this appeal.

[2] All further statutory references are to the Penal Code unless otherwise specified.

[3] The statement of facts is taken from the probation report.

from the company's loading dock into the beds of their trucks. After obtaining over $4,000 worth of merchandise, defendant and the codefendants got in their respective trucks and started driving toward the exit of the business.

At this point, two employees got into their vehicles and blocked the exit, preventing defendant and the codefendants from leaving. Defendant tried backing up and hit a metal object that was protruding from one of the employee's vehicles. Defendant then exited his truck. He began yelling and threatened to sue the employees for damaging his truck.

Shortly thereafter, police officers arrived. The officers detained defendant and the codefendants.

DISCUSSION

Defendant contends that his probation term should be reduced because section 1203.1, subdivision (a), under which he was sentenced to three years of formal probation, has been amended by Assembly Bill Number 1950 (Assem. Bill No. 1950), effective January 1, 2021. He contends that because his case is not yet final, under the principles of retroactivity applicable to ameliorative changes to the criminal law as set forth in *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*), he is entitled under Assem. Bill No. 1950 to have his probation term reduced from three years to two years. The People concede that "in light of recent appellate decisions agreeing with appellant, this case should be remanded to the trial court for modification of his probation." We agree.

In this case, when defendant was sentenced, section 1203.1 provided that a trial court may grant felony probation "for a period of time not exceeding the maximum possible term of the sentence." If the "maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years." (Former § 1203.1, subd. (a).) The trial court here granted probation for three years.

Effective January 1, 2021, Assem. Bill No. 1950 amended section 1203.1, subdivision (a), to limit the probation term for felony offenses to two years, except in cases of certain violent felonies. (Stats. 2020, ch. 328, § 2; § 1293.1, subds. (a), (m).)[4] "Assembly Bill No. 19050 is silent on retroactivity; it does not create a mechanism by which probationers may petition for early termination." (*People v. Quinn* (2021) 59 Cal.App.5th 874, 884 (*Quinn*).) In *Estrada*, *supra*, 63 Cal.2d 740, the court held, "When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final." (*Id.* at p. 745.)

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[4] Section 1203.1, subdivision (m), identifies the exceptions to the two-year probation limit. These exceptions are not applicable in this case.

Recently, in *People v. Sims* (2021) 59 Cal.App.5th 943 (*Sims*), another appellate court found that despite probation not technically being punishment, the retroactive rule of *Estrada* applied to Assem. Bill No. 1950. It found, "The People are correct that '[a] grant of probation is "qualitatively different from such traditional forms of punishment as fines or imprisonment." ' [Citation.] Probation is primarily rehabilitative and a grant of probation is considered an act of grace or clemency in lieu of traditional forms of punishment." (*Id.* at p. 958.) It further found, "However, we do not believe the label affixed to probation—i.e., whether it is labeled punishment, rehabilitation, or some combination—is necessarily determinative of whether the *Estrada* presumption of retroactivity applies. When a court places a defendant on probation, it may, of course, fine the defendant or order the defendant confined in jail, or both. [Citation.] But it has discretion to impose a variety of other probation conditions as well. It may, for example, require that the probationer submit to searches of electronic devices and social media accounts [citation], submit to periodic drug testing [citation], refrain from associating with persons or groups of persons [citation], and obtain permission from a probation officer before changing addresses or leaving the state or county. (*Id.* at p. 959.)

The *Sims* court recognized that by "limiting the maximum duration a probationer can be subject to such restraint, Assembly Bill No. 1950 has a direct and significant ameliorative benefit for at least some probationers who otherwise would be subject to additional months or years of potentially onerous and intrusive probation conditions." (*Sims*, *supra*, 59 Cal.App.5th at p. 959.) As such, "by limiting the duration of felony probation terms, Assembly Bill No. 1950 ensures that at least some probationers who

otherwise would have been imprisoned for probation violations will remain violation-free and avoid incarceration." (*Id.* at p. 950.)

The *Sims* court also found that, "Assembly Bill No. 1950 does not contain a savings clause evincing a clear intent to overcome the *Estrada* presumption of retroactivity. 'Nor do we perceive in the legislative history a clear indication that the Legislature did not intend for the statute to apply retroactively.' [Citation.] On the contrary, the legislative history for Assembly Bill No. 1950 suggests the Legislature harbored strong concerns that probationers—including probationers whose cases are pending on appeal—face unwarranted risks of incarceration due to the lengths of their probation terms." (*Sims*, *supra*, 59 Cal.App.5th at p. 961.)

The *Sims* court concluded, "For all these reasons, we conclude the two-year limitation on felony probation set forth in Assembly Bill No. 1950 is an ameliorative change to the criminal law that is subject to the *Estrada* presumption of retroactivity. The Legislature did not include a savings clause or other clear indication that the two-year limitation applies on a prospective-only basis. Therefore, we conclude the two-year limitation applies retroactively to all cases not reduced to final judgment as of the new law's effective date. Here, the defendant's case was pending on direct appeal and thus was not final as of Assembly Bill No. 1950's effective date. Accordingly, the defendant is entitled to seek a reduced probation term on remand under Assembly Bill No. 1950." (*Sims*, *supra*, 59 Cal.App.5th at p. 964.)

The court in *Quinn* came to the same conclusion finding that since "the Legislature has determined that the rehabilitative function of probation does not extend beyond two years, any additional period of probation can only be regarded as punitive, and therefore within the scope of *Estrada*." (*Quinn*, *supra*, 59 Cal.App.5th at p. 833.)

Following the reasoning in *Sims* and *Quinn,* we conclude that defendant is entitled to the benefit of the change to section 1203.1, subdivision (a). However, there remains the question of remedy. Defendant contends that this court should simply order his probation term to be modified to two years, and that there is no need to remand to the trial court for resentencing. The People, however, argue that "[m]erely striking any portion of the probationary term that exceeds two years deprives the trial court and the parties of a necessary determination of the status of the probation at the time it was terminated."

In essence, the People contend that in negotiated plea cases where ameliorative amendments apply, whereby the agreed-upon term becomes unenforceable, the matter should be remanded to allow them to withdraw from the plea or the trial court to rescind its approval of the agreement and return the parties to the status quo. (See *People v. Stamps* (2020) 9 Cal.5th 685, 706-708 (*Stamps*).) The People assert that since defendant here pled no contest in this case, we should reduce his three-year probation period and remand the matter to allow them the opportunity to withdraw from the plea or the trial court to rescind its approval and restore the parties to the status quo. Because the term of probation was negotiated as part of a plea agreement, we remand the matter for the trial court to modify the term of probation consistent with Assem. Bill 1950 and to permit the

People and the trial court the opportunity to withdraw approval of the plea agreement in light of the required modification to the term of probation.

In *Stamps*, the California Supreme Court concluded that a defendant was entitled to the benefit of an ameliorative change in the law—specifically, pursuant to Senate Bill No. 1393 (2017-2018 Reg. Sess.) (Sen. No. 1393), he was entitled to have the matter remanded for the trial court to exercise its discretion to strike a serious felony conviction enhancement in the interest of justice. (*Stamps*, *supra*, 9 Cal.5th at p. 699.) However, because the serious felony conviction enhancement was imposed as part of a negotiated stipulated sentence, if the trial court exercised its discretion to strike the enhancement, the People and the trial court were permitted to withdraw approval for the plea agreement. (*Id.* at pp. 707-708.) The defendant was not permitted " ' "to whittle down the sentence 'but otherwise leave the plea bargain intact.' " ' " (*Id.* at p. 706.)

In *People v. Hernandez* (2020) 55 Cal.App.5th 942 (review granted Jan. 27, 2021, S265739), the Fifth District Court of Appeal reached the same conclusion as in *Stamps*. There, the court directed the trial court to strike prior prison term enhancements pursuant to Senate Bill No. 136 (2019-2020 Reg. Sess) (Sen. No. 136). Moreover, the court concluded that the People and trial court must be permitted to withdraw approval for the negotiated plea. (*Hernandez* at pp. 958-959.) The court explained that the distinction between the discretionary nature of Sen. No. 1393 (*permitting* trial courts to strike serious felony enhancements) and the mandatory nature of Sen. No. 136 (*prohibiting* imposition of prior prison term enhancements for convictions not served for sexually violent offenses) was not dispositive to the issue of whether the People or a trial court must be

permitted to withdraw from a plea agreement. (*Hernandez* at p. 957.) Instead, the court explained that we should review "the history of the amendment[] to determine whether there was any intent . . . 'to change well-settled law that a court lacks discretion to modify a plea agreement unless the parties agree to the modification' to determine whether the district attorney can withdraw from the plea agreement." (*Hernandez*, at p. 957; accord, *Stamps*, *supra*, 9 Cal.5th at p. 702 ["In order to justify a remand for the court to consider striking his serious felony enhancement while maintaining the remainder of his bargain, defendant must establish not only that Senate Bill 1393 applies retroactively, but that, in enacting that provision, the Legislature intended to overturn long-standing law that a court cannot unilaterally modify an agreed-upon term by striking portions of it under section 1385"].) The court concluded that "there is no evidence the Legislature intended Senate Bill 136 to permit the trial court to unilaterally modify a plea agreement once the prior prison term enhancements are stricken." (*Hernandez*, at p. 958.)

Like Senate Bill Nos. 1393 and 136, there is no evidence that the Legislature intended Assem. Bill 1950 to permit unilateral modification of plea agreements by shortening negotiated terms of probation. We therefore vacate the sentence and remand the matter to the trial court to impose a term of probation that conforms with Assem. Bill 1950 and to permit the People and the trial court an opportunity to accede to the shorter term of probation or withdraw from the plea agreement.

DISPOSITION

The sentence is vacated. The matter is remanded to the trial court to modify the term of probation to conform with Assem. Bill 1950, and permit the People and trial court an opportunity to withdraw from the plea agreement.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **People v. Prudholme**
Case Number: **TEMP-EHC8CY8Y**
Lower Court Case Number:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/27/2021
Date

/s/Erica Gambale
Signature

Gambale, Erica (214501)
Last Name, First Name (PNum)

Erica Gambale, Attorney at Law
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