No. S277962

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

LUIS RAMON MANZANO ARELLANO,
Defendant and Appellant.

Sixth Appellate District, Case No. H049413
Santa Clara County Superior Court, Case No. 159386
The Honorable Daniel Nishigaya, Judge

RESPONDENT'S OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

In resentencing a person whose murder conviction has been vacated under Penal Code section 1172.6, may a court impose any sentence enhancement in addition to the sentence for the target offense or underlying offense?

INTRODUCTION

At issue in this case is an interpretive question arising from Senate Bill No. 1437 concerning the proper scope of resentencing after a murder conviction has been vacated under Penal Code section 1172.6.[1]

Section 1172.6 does not address resentencing in any detail. Relevant here, section 1172.6, subdivision (e), provides that "[t]he petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes if the petitioner is entitled to relief pursuant to this section, murder or attempted murder was charged generically, and the target offense was not charged." Appellant Luis Arellano argues that the trial court below violated this provision when, after granting relief on his section 1172.6 petition, it redesignated his second degree murder conviction as an attempted robbery and also imposed a related firearm enhancement. He contends that the statute does not permit the imposition of sentence enhancements.

Section 1172.6, subdivision (e), is silent with respect to the imposition of enhancements. But the text and structure of the

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[1] All further statutory references in this brief are to the Penal Code.

statute, as well as the legislative intent behind it, show that resentencing courts possess broad discretion after vacating a murder conviction to fashion a new sentence commensurate with the petitioner's culpability under current law. The stated purpose of Senate Bill No. 1437 is to reform the law so that sentences are proportional to the individual culpability of the defendant. And the only explicit limitation on resentencing under section 1172.6 is that the new sentence "is not greater than the initial sentence." (§ 1172.6, subd. (d)(1).) Arellano's restrictive interpretation of a court's resentencing authority under section 1172.6 would lead to disparate outcomes in similar cases and could sometimes even result in an extraordinary windfall for the petitioner. It would also undermine the Legislature's goal of ensuring that punishment is better calibrated to individual culpability.

LEGAL BACKGROUND

Senate Bill No. 1437 changed the law of murder by amending Penal Code sections 188 and 189 to eliminate the "natural and probable consequences" doctrine and to restrict the scope of the felony-murder doctrine. (*People v. Gentile* (2020) 10 Cal.5th 830, 842-843.) The bill also established a petition process, now codified at section 1172.6, under which persons previously convicted of murder can seek to have their convictions vacated. (*Id.* at p. 843.)[2] Relief is available under section 1172.6 if a

[2] Originally, this provision was codified as Penal Code section 1170.95. Effective January 1, 2022, the Legislature amended section 1170.95 to adopt certain of this Court's holdings (continued…)

petitioner shows that: (1) the prosecution proceeded under a theory that is no longer valid after Senate Bill No. 1437; (2) the petitioner was convicted of murder following a trial or an accepted plea; and (3) the petitioner could not today be convicted of murder because of the changes to section 188 or 189 made by Senate Bill No. 1437. (§ 1172.6, subd. (a)(1)-(3).)

When a petitioner makes this showing at a contested hearing, or when the prosecution stipulates to the petitioner's entitlement to relief, the court is required to vacate the petitioner's murder conviction and proceed to resentencing. (§ 1172.6, subds. (a), (d)(2), (d)(3).) Section 1172.6 states that the petitioner shall be resentenced "on any remaining counts in the same manner as if the petitioner had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence." (§ 1172.6, subd. (d)(1).) Alternatively, "[t]he petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes if the petitioner is entitled to relief pursuant to this section, murder or attempted murder was charged generically, and the target offense was not charged." (§ 1172.6, subd. (e).) The statute also clarifies that "[a]ny applicable statute of limitations shall not be a

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(…continued)

in *People v. Lewis* (2021) 11 Cal.5th 952. (Stats. 2021, ch. 551, § 1, subd. (b).) The Legislature later renumbered the provision without substantive change, effective June 30, 2022. (Stats. 2022, ch. 58, § 10.) This brief cites to the current version of the provision as codified at section 1172.6.

bar to the court's redesignation of the offense for this purpose." (*Ibid*.)

Several Court of Appeal decisions apart from the decision below have grappled with issues relating to the scope of a court's resentencing authority under section 1172.6. *People v. Howard* (2020) 50 Cal.App.5th 727 was the first published case to interpret section 1172.6, subdivision (e). In that case, an amended information charged Howard and two codefendants with first degree murder, alleged a special circumstance of burglary felony murder, and further alleged a firearm enhancement (§ 12022, subd. (a)(1)). (*Howard*, at p. 731.) A jury convicted Howard of first degree murder and found true the special circumstance and the firearm enhancement allegation. (*Id*. at p. 732.) Subsequently, Howard filed a petition for resentencing under section 1172.6. (*Id*. at p. 733.) Upon the agreement of the parties, the trial court granted the petition and vacated Howard's murder conviction. (*Ibid*.)

The trial court redesignated the conviction as a first degree residential burglary, even though the jury had been instructed on general burglary only, because it was clear from the evidence at trial that Howard committed a residential burglary with a person present. (*Howard*, *supra*, 50 Cal.App.5th at pp. 733-734; § 460, subd. (a) [burglary of a residence is of the first degree].) The court imposed the aggravated term of six years for first degree residential burglary, designated the burglary as a violent felony, and imposed an additional one-year term for a firearm enhancement (§ 12022, subd. (a)(1)). (*Howard*, at p. 734.)

The Court of Appeal in *Howard* held that the absence of a first degree burglary instruction and verdict did not preclude the superior court from redesignating the conviction as first degree burglary, because the evidence at trial established beyond any dispute that the building was a residence. (*Howard*, *supra*, 50 Cal.App.5th at p. 738.) Viewing subdivision (e) together with subdivision (d)(3), which describes with particularity the procedure for determining the petitioner's eligibility for relief, the court concluded that "the Legislature intended to grant the trial court flexibility when identifying the underlying felony for resentencing under subdivision (e)." (*Id*. at p. 739.) The court also reasoned that by designating Howard's conviction as first degree burglary, the trial court furthered the statute's stated purpose to punish a defendant according to his "'own level of individual culpability.'" (*Ibid*.)

The *Howard* court also held that the firearm enhancement was properly imposed as part of the resentencing. (*Howard*, *supra*, 50 Cal.App.5th at pp. 741-742.) The court first noted that section 1172.6, subdivision (e), is silent as to whether enhancements may be included in the new sentence. (*Id*. at p. 741.) It then reasoned that the "'traditional latitude for sentencing courts'" permits the imposition of an enhancement if established by the evidence in a section 1172.6 proceeding. (*Id*. at p. 742.) And it concluded that the enhancement was properly imposed in that case because the evidence established the facts supporting the enhancement "beyond any possible dispute." (*Ibid*.)

People v. Watson (2021) 64 Cal.App.5th 474 addressed section 1172.6, subdivision (e), in a slightly different context. The petitioner, Watson, sought relief under section 1172.6 following his guilty plea to second degree murder. (*Id*. at p. 478.) At a hearing on his section 1172.6 petition, Watson testified about the crime, describing how one of his cohorts had devised a plan to go to the victim's hotel room and take his money. (*Id*. at p. 479.) Watson knocked on the door, went into the room, and grabbed the victim from behind; his two cohorts then entered the room and one of them stabbed the victim during a struggle. (*Id*. at p. 479.) The court granted Watson's petition and redesignated his murder conviction as two separate felonies: a first degree robbery and first degree burglary. (*Id*. at pp. 480-481.)

On appeal, Watson argued that, under section 1172.6, subdivision (e)'s requirement that the conviction be redesignated as "the target offense or underlying felony," the superior court was limited to identifying only one underlying felony. (*Watson*, *supra*, 64 Cal.App.5th at p. 485.) The Court of Appeal disagreed, pointing to section 7, which states that "the singular number includes the plural, and the plural the singular." (*Ibid*.) The court also agreed with *Howard*'s reasoning that section 1172.6, subdivision (e), read together with subdivision (d)(3), "reflects a legislative intent to grant trial courts flexibility in designating the underlying offense for resentencing purposes." (*Id*. at p. 488.) Further, looking to the legislative history of Senate Bill No. 1437, the court explained, "A construction that is more aligned with the statute's purpose and history is one that does not eliminate the

discretion of the courts to designate more than one felony when necessary to 'calibrate' a defendant's punishment to his or her culpability." (*Id*. at p. 492.)

People v. Silva (2021) 72 Cal.App.5th 505 also involved the redesignation of a murder conviction to multiple felonies. Unlike in *Watson*, all but one of the redesignated felonies in *Silva* were committed against individuals other than the murder victims. (*Id*. at p. 531.) A jury had convicted Silva and his two codefendants of two counts of first degree murder arising out of a home-invasion robbery. (*Id*. at p. 509.) During the robbery, a number of people were taken into a back room of a house and robbed, and two visitors to the house were shot and killed after one of them was robbed at gunpoint. (*Id*. at pp. 509, 511.) In subsequent 1172.6 proceedings, the prosecution conceded that Silva was entitled to relief. (*Id*. at p. 513.) Following briefing and argument, the court imposed sentence on five counts of home-invasion robbery in concert and one attempted home-invasion robbery in concert. (*Id*. at p. 515.) Although all of these robbery counts had been included in the original information, the amended information did not include any robbery charges. (*Id*. at pp. 512, 515.)

The Court of Appeal rejected Silva's argument that he could be resentenced only for two generic, second degree robberies. (*Silva*, *supra*, 72 Cal.App.5th at pp. 518-532.) The court held that a resentencing judge may engage in factfinding as part of the redesignation procedure under section 1172.6. (*Id*. at p. 520.) The court also concluded that the statute vests a resentencing

court "with considerable discretion in redesignating the petitioner's murder convictions as underlying felonies and resentencing a petitioner to an appropriate term of years based on his or her individual culpability." (*Id*. at p. 532.) Accordingly, the court reasoned, "the [resentencing] court may consider the full extent of the petitioner's criminal conduct, and the redesignation may reflect, among other things, the number of crime victims, not just the number of murder charges on which the petitioner was convicted." (*Ibid*.)

STATEMENT OF THE CASE

A. Arellano's plea and sentence

In 1992, Arellano participated in a residential burglary and attempted robbery that resulted in the shooting and killing of one of the occupants of the house. (Opn. 2, 4.) Arellano and two codefendants were charged with: murder "with malice aforethought" (§ 187); attempted robbery (§§ 211, 212.5, subd. (a), 664); and first degree burglary (§§ 459, 460, subd. (a)). (Opn. 2.) With respect to the murder and attempted robbery counts, the complaint alleged that each defendant personally used a firearm during the commission of the offense (§§ 12022.5, subd. (a), 1203.06). (Opn. 2.)

Prior to the preliminary hearing, the parties reached a plea agreement. The prosecutor moved to amend the murder count to strike the phrase "with malice" and charge Arellano with second degree murder, and Arellano pleaded guilty to that charge in exchange for the dismissal of the remaining counts and the firearm enhancement allegations. (Opn. 2-3; see also CT 9-10.)

The court sentenced Arellano to an indeterminate term of 15 years to life. (Opn. 3.)

B. Arellano's resentencing under section 1172.6

Following the enactment of Senate Bill No. 1437, Arellano, through counsel, filed a petition for resentencing under section 1172.6. (Opn. 3.) The prosecution stipulated to resentencing. (Opn. 4.) The superior court vacated Arellano's murder conviction, stayed execution of the vacatur pending resentencing, and set the matter for further proceedings to redesignate the charge or charges upon which Arellano would be resentenced. (Opn. 4-5.)

After the parties submitted briefing, the court held a hearing on the redesignation and resentencing. (Opn. 5-7.) Although Arellano's attorney had initially agreed that Arellano would be resentenced on the attempted robbery offense and firearm enhancement, he asserted at the hearing that the court lacked authority to impose the enhancement and that the evidence was unclear regarding whether Arellano possessed a firearm. (Opn. 5, 7.)

The superior court rejected Arellano's argument. (Opn. 7.) Relying on *Howard*, the court concluded that it had "the authority to redesignate the murder conviction to an appropriate target offense, to properly reflect the defendant-petitioner's individual culpability under the circumstances that have led to the petition itself and is the purpose for which we are here." (Opn. 7.) The court also observed that there was evidence in the

record suggesting that Arellano possessed a handgun during the underlying offense. (Opn. 8.)

The court redesignated Arellano's conviction as attempted robbery (§§ 211, 212.5, subd. (a), 664) with a related firearm enhancement (§ 12022.5, subd. (a)). (Opn. 8.) The court resentenced Arellano to a total term of seven years, consisting of the upper term of three years for the attempted robbery and the middle term of four years for the firearm enhancement. (Opn. 8.) The court found that the seven-year prison term was satisfied by time served. (Opn. 8.)

C. The Court of Appeal's decision

The Court of Appeal reversed. (Opn. 22.) The court began with the observation that section 1172.6's literal language did not cover the circumstances of this case because a target offense was charged, making subdivision (e) inapplicable, but that charge was later dismissed, making subdivision (d)(3) inapplicable. The court held, however, that subdivision (e) authorized the trial court to "redesignate Arellano's murder conviction using the attempted robbery as the target offense/underlying felony and to resentence Arellano on that crime." (Opn. 13-14.) That interpretation, the court reasoned, "avoids a nonsensical circumstance in which a petitioner like Arellano, who is entitled to relief from his murder conviction under section 1172.6 and had originally been charged with a target offense or underlying felony that later was dismissed as part of a plea bargain, could not be resentenced if no other conviction remained extant after vacatur of the murder conviction." (Opn. 14.)

But, disagreeing with *Howard*, the court further held that "the plain meaning of the phrase '[t]he petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes' in section 1172.6, subdivision (e), does not authorize enhancements to be attached to the redesignated conviction for resentencing." (Opn. 17.) The court relied on "the settled distinction in our penal law between an 'offense' and a sentence enhancement and the statutory framework of section 1172.6 as a whole," finding significance in the fact that in subdivision (e), the Legislature called for resentencing only on the "target offense" without mentioning enhancements. (Opn. 18-20.) The court also pointed to subdivision (d)(3), which makes specific reference to enhancements by requiring that when a petitioner is entitled to relief under section 1172.6, "the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated." (Opn. 20.) The court defended its interpretation against an anticipated objection that it would "result in absurd consequences the Legislature did not intend," stating that its holding "simply limits a petitioner's exposure in a relatively definite manner to only a specific offense and avoids the complexities that could arise in deciding which of the myriad sentencing enhancements in our penal law might be applicable to a particular factual scenario." (Opn. 19.)

The court remanded the case for further proceedings to redesignate Arellano's vacated murder conviction as the underlying felony and resentence him. (Opn. 21.) The court stated, "We leave it to the trial court and parties on remand to

determine whether the underlying felony for resentencing purposes should comprise either or both attempted robbery and first degree burglary." (Opn. 21.) The court also "invite[d]" the Legislature to "review the statutory scheme and clarify whether this subdivision (1) applies to crimes that were originally charged but dismissed prior to the original murder conviction and (2) authorizes a court to include sentence enhancements when resentencing on a target offense or underlying felony." (Opn. 21.)

ARGUMENT

A RESENTENCING COURT HAS THE AUTHORITY UNDER SECTION 1172.6 TO IMPOSE A SENTENCE ENHANCEMENT IN CONNECTION WITH A REDESIGNATED CONVICTION

The text of section 1172.6, subdivision (e), does not directly address whether a resentencing court may impose a sentence enhancement once the court has redesignated the vacated murder conviction as the "target offense" or "underlying felony." Viewing subdivision (e) in the context of the other provisions of section 1172.6, the statute is best read as providing resentencing courts with flexibility in fashioning a new sentence after vacating a murder conviction, including by imposing sentence enhancements. This interpretation accords with the legislative purpose behind Senate Bill No. 1437, which was to reform the laws so that sentences are commensurate with the individual moral culpability of the defendant.

A. The principles of statutory construction

When interpreting a statute, the reviewing court's "'fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose.'" (*Sierra Club v. Superior*

Court (2013) 57 Cal.4th 157, 165.) The reviewing court must first examine the statutory language "giving it a plain and commonsense meaning"; in doing so, the court must not view the statutory language in isolation, "but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.) "Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

If the statutory language permits more than one reasonable interpretation, courts may look to extrinsic interpretive aides, such as the statute's purpose, legislative history, and public policy. (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.) Ultimately, the court should adopt "'the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute.'" (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 321.)

B. The text and structure of section 1172.6 suggest that resentencing courts possess broad discretion in redesignating a vacated murder conviction

The text of section 1172.6 as a whole strongly suggests that the Court of Appeal's interpretation of the statute is incorrect and that, instead, courts retain broad discretion in resentencing

under subdivision (e), including the discretion to impose sentence enhancements.

Section 1172.6 contemplates two resentencing scenarios: a full resentencing on any additional "counts" remaining after a petitioner's murder conviction is vacated (§ 1172.6, subds. (d)(1), (d)(3)); or, if there are no such remaining counts, a redesignation of the murder conviction to the "target offense or underlying felony" and resentencing on that basis (§ 1172.6, subd. (e)). Because there were no remaining counts in this case after Arellano's murder conviction was vacated, the alternative redesignation procedure under subdivision (e) governs his resentencing, as the court and both parties recognized below. (Opn. 14.)

Subdivision (e) states only that if the petitioner is entitled to relief, the murder was charged generically, and the target offense was not charged, the petitioner's conviction "shall be redesignated as the target offense or underlying felony for resentencing purposes." In the context of felony murder, the phrase "underlying felony" means the offense that was the basis for felony-murder liability at trial. (See, e.g., *People v. Cavitt* (2004) 33 Cal.4th 187, 196-201.) The phrase "target offense" is used in the context of the natural and probable consequences doctrine with respect to the crime that the defendant intended to commit, encourage or facilitate. (See, e.g., *People v. Prettyman* (1996) 14 Cal.4th 248, 266-268.) The subdivision therefore does not expressly speak to whether the resentencing court may impose a sentence enhancement in connection with the

underlying felony or target offense that has been redesignated as the petitioner's conviction.

The absence of express authorization to impose an enhancement upon resentencing is not determinative, however. The statute's reference to a "target offense" or an "underlying felony" does not necessarily encompass—but also does not necessarily exclude—an enhancement based on that offense. As the Court of Appeal in this case recognized, a sentence enhancement is not a separate crime or offense, but rather an additional punishment for the underlying offense. (Opn. 18-19.) "'[I]n our statutory scheme sentence enhancements are not "equivalent" to, nor do they "function" as, substantive offenses. Most fundamentally, a sentence enhancement is not equivalent to a substantive offense, because a defendant is not at risk for punishment under an enhancement allegation until convicted of a related substantive offense.'" (*People v. Dennis* (1998) 17 Cal.4th 468, 500.)

Therefore, it is necessary to look to other provisions of section 1172.6 to determine whether the resentencing court may impose a sentence enhancement on the redesignated conviction. (See *Lungren*, *supra*, 45 Cal.3d at p. 735 ["the words [of a statute] must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible"].) Section 1172.6 as a whole suggests that the Legislature intended that resentencing courts have flexibility in redesignating the conviction and imposing an appropriate sentence thereafter.

Notably, the statute does not establish any procedure for determining the underlying felony or target offense or the subsequent resentencing. In contrast, subdivision (d)(3), for example, sets forth detailed requirements for the eligibility hearing, including the prosecution's burden of proof and what evidence the court may consider. The absence of language regarding the procedure for redesignating the conviction and resentencing thereon suggests a purposeful design to afford trial courts with flexibility in carrying out these tasks. (See *Howard*, *supra*, 50 Cal.App.5th at p. 739 ["Reading subdivision (d)(3) and (e) together suggests the Legislature knew how to circumscribe the court's redesignation decisionmaking power and declined to do so"]; see also *Watson*, *supra*, 64 Cal.App.5th at p. 488 ["We agree with the *Howard* court's reasoning that reading section 1170.95, subdivisions (d)(3) and (e) together reflects a legislative intent to grant trial courts flexibility in designating the underlying offense for resentencing purposes"].)

Indeed, an interpretation that forecloses resentencing on enhancements, based on the statute's failure to expressly address them, would produce absurd results. As conceded by the Court of Appeal, this case does not even fall within the literal terms of the statute. One of the requirements of subdivision (e) is that the "target offense was not charged." Here, however, the target offenses of attempted robbery and burglary *were* charged but they were later dismissed pursuant to the negotiated disposition. And subdivision (d) applies only when there are remaining convictions from the underlying prosecution, which there were not in this

case. Under Arellano's narrow interpretation of a court's resentencing authority under section 1172.6, resentencing would arguably be precluded altogether in this case, because it does not fall within either subdivision (e) or subdivision (d). That result would be, in the words of the Court of Appeal, "nonsensical."

While acknowledging that potential absurdity, the court below otherwise adhered to a narrow interpretation of a court's resentencing authority under subdivision (e). But that interpretation itself leads to inconsistency with subdivision (d)(1). That subdivision provides that, if relief is granted, the court shall "recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence." A leading sentencing treatise explains that, under this provision, "the court will be free to resentence all counts, including the consecutive or concurrent structure of the sentence on multiple counts." (Couzens et al., Sentencing California Crimes (Aug. 2022 update) § 23.51(H)(4).) "The only restriction is that the new sentence may be equal to, but not greater than, the total original sentence." (*Ibid.*) Under subdivision (d)(1), therefore, the court may sentence the petitioner on enhancements that were found true in connection with the remaining counts. Under the Court of Appeal's interpretation of subdivision (e), however, a court could not impose an enhancement in a similar case where the prosecution

elected not to charge a target offense with an attached enhancement.[3]

Arellano's restrictive interpretation of a resentencing court's authority under the statute would produce absurd results in other ways as well. For example, as the courts in *Silva* and *Watson* recognized, when proceeding under subdivision (e), a court may designate more than one underlying or target offense for purposes of resentencing, even though the statute does not expressly authorize that. A contrary rule would mean that a resentencing under subdivision (d) on similar facts could produce a markedly different sentence based only on whether the prosecution chose to charge multiple underlying or target offenses. Nothing in the statutory language or structure suggests a rational reason for that result.[4]

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[3] If the prosecution fails to sustain its burden of proof at the eligibility hearing, the prior murder conviction and "any allegations and enhancements *attached to the conviction*" shall be vacated. (§ 1172.6, subd. (d)(3), italics added.) The Court of Appeal found significance in the fact that subdivision (d)(3) mentions "enhancements" whereas subdivision (e) does not. (Opn. 20.) That inference makes far too much of subdivision (d)(3)'s isolated reference—particularly in light of the other indicia in the statute that point the other way, including the ability to impose an enhancement when resentencing under subdivision (d)(1).

[4] Indeed, the court below, despite its otherwise narrow interpretation of section 1172.6 resentencing authority, left room for the possibility that upon remand the trial court could redesignate the conviction as "either or both attempted robbery and first degree burglary," even though subdivision (e) refers to

(continued…)

Similarly, a rigid reading of subdivision (d) could lead to results that are in tension with subdivision (e). The language of subdivision (d), taken literally and in isolation, confines the court to resentencing on any remaining counts and no others, even if those counts are not representative of the target offense or underlying felony. For example, in a felony murder case where the prosecution did not charge the underlying felony but chose to charge a related misdemeanor that was committed during the course of the murder, the literal terms of subdivision (d) require that the court resentence the defendant on the misdemeanor only. But a similar case in which the prosecution elected not to charge the misdemeanor would proceed under subdivision (e), resulting in redesignation to the underlying felony. Again, no rational reason for those conflicting results is apparent.

The Court of Appeal below justified its reading of section 1172, subdivision (e), in part, on the ground that it "avoids the complexities that could arise in deciding which of the myriad sentencing enhancements in our penal law might be applicable to a particular factual scenario." (Opn. 19.) The Court of Appeal's decision does not, however, entirely avoid questions about issues such as notice and proof that may be implicated when a court redesignates a vacated murder conviction for purposes of resentencing. Those questions may arise, for example, in

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(…continued)

the "target offense" or "underlying felony" in the singular. (Opn. 21.)

connection with a resentencing court's identification of an uncharged target offense or underlying felony regardless of whether the court also elects to impose an enhancement. (See *Silva*, *supra*, 72 Cal.App.5th at pp. 520-524.) The imposition of an enhancement on a redesignated conviction would not add significantly to the complexities that are already implicated in the redesignation process. The existence of such complexities thus does not support the Court of Appeal's rejection of the interpretation of subdivision (e) that is most consistent with the language of section 1172.6 as a whole and the purpose of the statute.[5]

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[5] Below, Arellano raised several issues involving the "complexities" alluded to in the Court of Appeal's opinion. His additional claims were based on due process notice principles, the Sixth Amendment rights to a jury trial and proof beyond a reasonable doubt, evidentiary sufficiency, and double jeopardy. (See Case No. H049413, appellant's opening brief 23-42, appellant's reply brief 8-18, appellant's supplemental brief 4-5.) The Court of Appeal did not reach any of those arguments, nor are they within the scope of this Court's grant of review. (See Cal. Rules of Court, rule 8.516.) The Court need not grapple with any such issues to answer the broader question of statutory construction that is presented here; to the extent Arellano continues to press his additional claims, they may be addressed on remand. (See *In re Cabrera* (2023) 14 Cal.5th 476, 492 [remanding for Court of Appeal to consider issues it did not reach in light of separate issue that this Court's decision "bears directly on"]; *Coast Community College Dist. v. Com. on State Mandates* (2022) 13 Cal.5th 800, 822 ["It is appropriate to remand for the Court of Appeal to resolve in the first instance issues that the court chose not to reach because of its holdings" (quotation marks and alterations omitted)], citing *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1149.)

Whether the petitioner is resentenced on remaining counts or on a redesignated conviction, the statute suggests that the goal is to permit a court to fashion a new sentence based on the petitioner's culpability under current law, not to restrict the trial court's ability to sentence the petitioner appropriately. There is nothing in the statute indicating that resentencing courts would not have similar latitude whether proceeding under subdivision (d) or subdivision (e). A contrary interpretation would result in markedly different approaches to resentencing based only on how the prosecution happened to charge a case prior to the amendments to the law of murder. Nothing in the statutory text or structure supports that odd result. Rather, the statute as a whole strongly suggests that resentencing courts have flexibility in determining the appropriate sentence for the redesignated conviction and may impose an enhancement that increases the punishment for the offense or offenses. (See *Lungren*, *supra*, 45 Cal.3d at p. 735 ["if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed"].)

C. The statute's purpose and legislative history confirm that resentencing courts possess broad discretion to fashion a sentence commensurate with culpability

The legislative purpose behind Senate Bill No. 1437 also confirms that courts, in resentencing under section 1172.6, retain broad discretion to calibrate an appropriate sentence in line with the petitioner's culpability under current law, including the ability to impose sentence enhancements.

In an uncodified preamble to Senate Bill No. 1437, the Legislature declared, "It is a bedrock principle of the law and of equity that a person should be punished for his or her actions according to his or her own level of individual culpability." (Stats. 2018, ch. 1015, § 1, subd. (d).) The Legislature also stated: "Reform is needed in California to limit convictions and subsequent sentencing so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual." (Stats. 2018, ch. 1015, § 1, subd. (d); see *People v. Canty* (2004) 32 Cal.4th 1266, 1280 ["In considering the purpose of legislation, statements of the intent of the enacting body contained in a preamble, while not conclusive, are entitled to consideration"]; see also *People v. Valencia* (2017) 3 Cal.5th 347, 362-363 [considering uncodified preamble to Proposition 47].) This uncodified language establishes that the goal of Senate Bill No. 1437 was to reform the law so that sentences are commensurate with the individual culpability of the offender.

That legislative purpose is reaffirmed throughout the legislative history. A report by the Assembly Committee on Appropriations states, "According to the author: [¶] SB 1437 seeks to *restore proportional responsibility* in the application of California's murder statute reserving the harshest punishments for those who intentionally planned or actually committed the killing." (Assem. Com. on Appropriations, Rep. on Sen. Bill No.

1437 (2017-2018 Reg. Sess.) Aug. 8, 2018, p. 2, italics added.) Quoting the Michigan Supreme Court, this same report stated: "'The felony-murder doctrine is unnecessary and in many cases, unjust in that it violates the basic premise of individual moral culpability upon which our criminal law is based.'" (*Ibid.*)

In enacting Senate Bill No. 1437, the Legislature repeatedly characterized the felony-murder doctrine as eliminating the relationship between a defendant's individual culpability and his or her punishment. For example, a report by the Senate Committee on Public Safety quoted *People v. Cavitt*, *supra*, 33 Cal.4th at page 197, which explained that under the felony-murder rule, "'[o]nce a person perpetrates or attempts to perpetrate one of the enumerated felonies, then in the judgment of the Legislature, he is no longer entitled to *such fine judicial calibration*, but will be deemed guilty of first degree murder for any homicide committed in the course thereof.'" (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Apr. 24, 2018, p. 6, italics added.) The report also invoked *People v. Dillon* (1983) 34 Cal.3d 441, in which this Court recognized that the felony-murder rule had been criticized "'because it anachronistically resurrects from a bygone age a "barbaric" concept that has been discarded in the place of its origin' [citation] and because 'in almost all cases in which it is applied it is unnecessary' and 'it *erodes the relation between criminal liability and moral culpability*.' [Citation]." (Sen. Com. on Public Safety, Rep. on Sen. Bill No. 1437 (2017-2018 Reg. Sess.) Apr. 24, 2018, p. 4, italics added.)

The legislative history makes clear that the purpose of Senate Bill No. 1437 was to more accurately calibrate punishment in relation to moral culpability in cases formerly imposing murder liability under the natural and probable consequences and felony murder doctrines. As the Court of Appeal in *Watson* concluded: "The statements of the preamble and the legislative history of Senate Bill No. 1437 confirm the Legislature's intent to restore . . . the '"normal legislative policy of examining the individual state of mind"' and affording defendants convicted of murder '"fine judicial calibration"' with respect to punishment." (64 Cal.App.5th at p. 492.)

The legislative purpose of punishing individuals in accordance with their "own level of individual culpability" (Stats. 2018, ch. 1015, § 1, subd. (d)) strongly suggests that the resentencing provisions of section 1172.6 were intended to permit courts broad discretion in achieving that end, including by imposing enhancements when redesignating a murder conviction. "Enhancements typically focus on an element of the commission of the crime or the criminal history of the defendant which is not present for all such crimes and perpetrators and which justifies a higher penalty than that prescribed for the offenses themselves. That is one of the very purposes of an enhancement's existence." (*People v. Hernandez* (1988) 46 Cal.3d 194, 207-208, abrogated on other grounds by *People v. King* (1993) 5 Cal.4th 59, 78, fn. 5.) The firearm enhancement at issue in this case falls within the category of enhancements that '"arise from the circumstances of the crime and typically focus on what the defendant did when the

current offense was committed.'" (*People v. Ahmed* (2011) 53 Cal.4th 156, 161.) Permitting the resentencing court to exercise its discretion to impose this sort of enhancement allows a more complete consideration of the petitioner's conduct during the commission of the crime and a finer calibration of the sentence to the petitioner's individual culpability.

In contrast, the Court of Appeal's interpretation of subdivision (e) precluding sentence enhancements undermines the goal of restoring proportional responsibility. Petitioners who would otherwise be subject to increased sentences based on their individual conduct during the crime could receive a windfall under section 1172.6; at least in some cases, their new sentences would not reflect their moral culpability and would be lighter than sentences imposed for the same conduct prosecuted today under the law as reformed by Senate Bill No. 1437. Although the Legislature wanted to extend relief to defendants whose culpability no longer warrants liability for *murder*, there is no reason to believe that the Legislature intended to permit a windfall as to other offenses and their attendant enhancements. (See *Watson*, *supra*, 64 Cal.App.5th at p. 492 ["adopting Watson's interpretation of subdivision (e) would bestow a windfall on Watson, who has already been afforded the '"ameliorative benefits"' of the statute"].)

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

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June 9, 2023

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S OPENING BRIEF ON THE MERITS uses a 13 point Century Schoolbook font and contains 6,408 words.

ROB BONTA
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June 9, 2023

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Arellano**

No.: **S277962**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

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Hall of Justice
Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Sixth District Court of Appeal
333 W Santa Clara St #1060
San Jose, CA 95113

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 9, 2023, at San Diego, California.

N. Rodriguez	N. Rodriguez
Declarant	Signature

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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/s/Natalie Rodriguez
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Department of Justice, Office of the Attorney General-San Diego
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