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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS CAMARILLO,

Defendant and Appellant.

A163883

(Solano County  
Super. Ct. No. FCR331711)

**MEMORANDUM OPINION<sup>1</sup>**

After a jury found Jesus Camarillo guilty of second degree murder (Pen. Code, §§ 187, subd. (a), 189, subd. (b); count 1)<sup>2</sup> and attempted murder (§§ 187, subd. (a), 664; count 2) with true findings on firearm enhancements to both counts (§ 12022.53, subds. (c), (d)), the Solano Superior Court sentenced him to 47 years to life in prison. (*People v. Camarillo* (Jan. 20, 2021, A155577 [nonpub. opn.] pp. 1, 6–7).<sup>3</sup> This division affirmed his

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<sup>1</sup> Cal. Stds. Jud. Admin., § 8.1; Ct. App., First Dist., Local Rules of Ct., rule 19.

<sup>2</sup> Undesignated statutory references are to the Penal Code.

<sup>3</sup> We grant Camarillo’s unopposed request for judicial notice of this court’s records of his prior appeal (Evid. Code, §§ 459, subd. (a), 452, subd. (d)), including this division’s prior opinion, which we cite only for background (Cal. Rules of Court, rule 8.1115(a), (b); *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 951, fn. 3). We

convictions but remanded his case for resentencing under *People v. Morrison* (2019) 34 Cal.App.5th 217 “to consider whether to strike the section 12022.53, subdivision (d) enhancement and impose a lesser enhancement in connection with [his] second degree murder conviction.” (*People v. Camarillo*, at pp. 27, 28.) The court did just that when it resentenced him to 42 years to life, striking the section 12022.53, subdivision (d) enhancement to count 1 and imposing the subdivision (c) and subdivision (b) enhancements, staying the latter under section 654. Camarillo now appeals the resentencing order but for a different reason, arguing subsequent amendments to section 1170 require resentencing on count 2. The People agree he is at least entitled to a new sentencing hearing on count 2, and so do we, though we reject his related section 654 argument as to the stayed enhancement to count 1. We independently review these statutes’ interpretation and application. (*People v. Childs* (2013) 220 Cal.App.4th 1079, 1101.)

In 2021 the Legislature amended the determinate sentencing law to mandate the lower term of imprisonment if any of three circumstances “was a contributing factor in the commission of the offense,” including if the offender “was a youth as defined under subdivision (b) of Section 1016.7 at the time . . . .” (§ 1170, subd. (b)(6), (b)(6)(B), amended by Stats. 2021, ch. 731, § 1.3, No. 5E Deering’s Adv. Legis. Service, p. 609, eff. Jan. 1, 2022.)<sup>4</sup> “A ‘youth’ [is] any person under 26 years of age on the date the offense was committed.” (§ 1016.7, subd. (b), added by Stats. 2021, ch. 695, § 4, No. 5E

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deny the remainder of his request as unnecessary (*People v. Sands* (2021) 70 Cal.App.5th 193, 201, fn. 3).

<sup>4</sup> The amended law nevertheless exempts the court from imposing the lower term if it would be “contrary to the interests of justice,” weighing the aggravating and mitigating circumstances affecting sentencing. (§ 1170, subd. (b)(6).)

Deering’s Adv. Legis. Service, p. 299, eff. Jan. 1, 2022.) Camarillo was 16 at the time. (*People v. Camarillo*, *supra*, A155577, at p. 2.) We agree with the parties that these amendments apply retroactively to him and that he is entitled to a hearing on whether to resentence him to the lower term on count 2. (*People v. Flores* (2022) 73 Cal.App.5th 1032, 1039.)

Camarillo also argues he is entitled to resentencing on the firearm enhancements to count 1 under the 2021 amendment to section 654. (Stats. 2021, ch. 441, § 1, No. 5C Deering’s Adv. Legis. Service, p. 23, eff. Jan. 1, 2022.) The People correctly respond, “The sentence on a lesser enhancement that was alleged and found true is stayed not by section 654 but by section 12022.53 itself.” “[T]he sentence enhancement provisions of Penal Code section 12022.53 are not limited by the multiple punishment prohibition of Penal Code section 654,” and “in enacting section 12022.53, the Legislature made clear that it intended to create a sentencing scheme unfettered by section 654.” (*People v. Palacios* (2007) 41 Cal.4th 720, 723, 727–728.) Section 12022.53, subdivisions (b)–(d) mandate that their enhancements be applied “[n]otwithstanding any other law . . . .” “The only limitation to this rule is found in subdivision (f) . . . .” (*People v. Palacios*, at pp. 725–726 & fn. 4, 731–733.)<sup>5</sup> “Here, the broad and unambiguous scope of ‘[n]otwithstanding any other . . . law’ overrides the application, if any, of section 654 to the imposition of punishment prescribed in section 12022.53, subdivisions (b), (c) and (d).” (*People v. Palacios*, at p. 729; see *People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1314 [“where imposition of a firearms

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<sup>5</sup> “Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. . . .” (§ 12022.53, subd. (f).)

use enhancement is made mandatory notwithstanding other sentencing laws and statutes, it is error to apply section 654 to stay imposition of such an enhancement” (italics omitted); *Isaak v. Superior Court* (2022)

73 Cal.App.5th 792, 798–799 [the phrase *notwithstanding any other provision of law* is “ ‘a “ ‘term of art’ ” ” with “ ‘special interpretative importance’ ”].)

“[A]fter a trial court imposes punishment for the section 12022.53 firearm enhancement with the longest term of imprisonment, the remaining section 12022.53 firearm enhancements . . . found true for the same crime must be imposed and then stayed” under section 12022.53, not section 654. (*People v. Gonzalez* (2008) 43 Cal.4th 1118, 1130.)<sup>6</sup> To stay the section 12022.53, subdivision (b) enhancement under section 654 was error, though harmless, applying section 12022.53, subdivision (f). The court can correct the error on remand under the full resentencing rule, which “allows a court to revisit all prior sentencing decisions when resentencing a defendant.” (*People v. Valenzuela* (2019) 7 Cal.5th 415, 424–425; *People v. Buycks* (2018) 5 Cal.5th 857, 893–895.)

## DISPOSITION

We reverse the Solano Superior Court’s order of September 14, 2021, and remand for resentencing on Camarillo’s attempted murder conviction under amended Penal Code section 1170, subdivision (b), and to stay the Penal Code section 12022.53, subdivision (b) enhancement to Camarillo’s second degree murder conviction under section 12022.53, subdivision (f).

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<sup>6</sup> “Often the sentencing statutes themselves will supply the answer whether multiple enhancements can be imposed. . . . When this is the situation, recourse to section 654 will be unnecessary because a specific statute prevails over a more general one relating to the same subject. . . . [¶] Only if the specific statutes do not provide the answer should the court turn to section 654.” (*People v. Ahmed* (2011) 53 Cal.4th 156, 163.)

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Jackson, P. J.

WE CONCUR:

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Simons, J.

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Wiseman, J.\*

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\* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.