

***People v. Padilla*: Supreme Court Confirms that Resentencing Renders Case Non-Final for *Estrada* Applicability of Ameliorative Legislation**

By J. Bradley O'Connell

July 5, 2022

Under *In re Estrada* (1965) 63 Cal.2d 740, and subsequent cases, new legislation that reduces the scope of criminal liability or ameliorates sentencing is ordinarily deemed applicable to any case that is not yet “final” on direct review as of the effective date of the legislation. (E.g., *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299 (Prop. 57).) In its May 2022 opinion in *Padilla*, the Supreme Court has clarified that **any judicial action that vacates a judgment and requires resentencing renders a case non-final for *Estrada* retroactivity purposes**, even if that case had previously become final on direct appeal from the original judgment.

Padilla, who was 16 at the time of the underlying murder, was tried in adult court and received LWOP. His case was affirmed on direct appeal. However, he later obtained habeas corpus relief based on *Miller v. Alabama* (2012) 567 U.S. 460. The habeas court vacated the judgment and ordered a new sentencing hearing. However, on resentencing, the court again imposed LWOP. On appeal from that judgment, Padilla obtained a remand, requiring another resentencing, based on *Montgomery v. Louisiana* (2016) 577 U.S. 190 (which clarified the requirements of *Miller*). Prior to that second resentencing, the electorate adopted Proposition 57, which altered the standards under which a juvenile may be tried as an adult.

By a 4-3 vote, the Supreme Court held that, under the *Estrada* doctrine, Padilla was entitled to the benefit of Prop. 57, because his resentencing proceedings were not yet “final” at the time of Prop. 57’s adoption. Although Padilla’s judgment had previously become final upon the conclusion of his original direct appeal, the later habeas disposition on his *Miller* claim restored his case to a non-final status, because it *vacated the previous judgment and ordered a new sentencing hearing*. “[T]he vacatur of Padilla’s sentence made the judgment in his case nonfinal.” (*Padilla*, 293 Cal.Rptr.3d at 629.) Those resentencing proceedings, in turn, were not yet final at the

time of Prop. 57's enactment, because the appellate court had ordered another sentencing remand (based on *Montgomery*). Because the resentencing was not yet final, Padilla was entitled to the benefit of that legislation – a Prop. 57 transfer hearing to assess retrospectively his suitability for a juvenile disposition.

Padilla plainly has broad implications for *Estrada* issues beyond the specific ameliorative legislation at issue (Prop. 57) and the judicial action which resulted in the resentencing proceedings (habeas relief on a *Miller v. Alabama* claim). Here are several key “takeaways” from the *Padilla* opinion:

- **Any judicial disposition which vacates a prior judgment and results in a resentencing proceeding (or a retrial) renders the case non-final for *Estrada* purposes, regardless of whether that disposition occurs on direct review (such as a remand on direct appeal) or on collateral review (such as the habeas order in *Padilla*).** The *Padilla* majority expressly refused to limit *Estrada* applicability of ameliorative legislation to resentencings ordered on direct appeal. “[O]nce a court has determined that a defendant is entitled to resentencing, the result is vacatur of the original sentence, whereupon the trial court may impose any appropriate sentence.” (*Padilla*, 293 Cal.Rptr.3d at 630.)
 - While *Padilla* involved a habeas decision requiring resentencing, there is a strong argument that its rationale should also apply to other proceedings in which a court vacates a judgment and conducts resentencing proceedings – including sentence recalls under either Pen. Code § 1170 or § 1170.03. The mere initiation of a sentence recall request would likely not affect finality. But, if the court does recall the sentence and conducts a resentencing, that action would effectively reopen the judgment and entitle the defendant to the benefit of any intervening ameliorative legislation.
 - *Padilla* should also apply to situations in which CDCR “kicks back” a sentence to superior court for consideration of a possible “unauthorized sentence.” Although the impetus may be a CDCR letter, if the superior court acts on that request *and conducts a new sentencing hearing* to address the point raised by CDCR, that judicial action should also reopen the finality of the case under *Padilla*.

- However, this rationale likely would only apply to collateral proceedings *that actually result in a new sentencing hearing*. It does *not* appear that the finding of a prima facie case and/or the issuance of an OSC on a habeas petition or on a § 1170.95 petition would be sufficient. *Padilla* and *Estrada* would likely apply only if the court *granted* the habeas or § 1170.95 petition *and ordered a new sentencing hearing*.
- **It makes no difference whether the error or other event necessitating the resentencing concerned a different aspect of the judgment or sentence than the new ameliorative legislation.** In *Padilla*, the resentencing hearings were prompted by intervening case law requiring reconsideration of the LWOP sentence imposed on a juvenile tried in adult court. But the adoption of Prop. 57 while those resentencing proceedings were still pending entitled *Padilla* to a hearing on the more fundamental question of whether his case was properly adjudicated in adult court in the first place.

In sum, under *Padilla*, the dispositive circumstance appears to be whether a judicial order *vacates the judgment and orders some form of resentencing*. Moreover, as reflected in numerous opinions in recent years, where an appellate court orders a remand for a sentencing court to exercise its discretion under one piece of legislation (e.g., discretion to strike firearm enhancements), the sentencing court must also consider any *other* intervening ameliorative legislation (e.g., discretion to strike “serious felony” enhancements) which has become effective as of the time of the resentencing.

Padilla does not necessarily resolve all issues that may arise in this area. Some appellate or other dispositions, such as an opinion directing a specific modification of some provision of a judgment, may raise questions as to whether the prior judgment has actually been vacated or whether the superior court’s compliance with that instruction qualifies as a resentencing. Nonetheless, *Padilla* should make this principle clear: Any judicial action that sets aside or vacates a judgment and/or orders some form of resentencing reopens the finality of the case for *Estrada* purposes. And the resentencing judgment, in turn, will not become final until appellate review of that judgment has been concluded.

Finally, counsel should always remember that the *Estrada* rule applying new ameliorative legislation to cases not yet “final” is a principle of statutory construction for the common situation in which the legislation itself does not

directly address the subject. However, some recent pieces of reform legislation have included explicit provisions prescribing different rules. For example, certain provisions of the recent Racial Justice Act apply only “if *judgment was entered* on or after January 1, 2021.” (Pen. Code § 1473(f) (emphasis added); also § 745(j).) And very recent legislation requiring dismissal of enhancements in certain circumstances (S.B. 81) “shall apply to sentencings occurring after [its] effective date....” (Jan. 1, 2022). (Pen. Code § 1385(c)(7).) Rather than assume that “finality” is necessarily the benchmark, counsel should always check the specific legislation to see if it explicitly states any different rule.