

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT,
DIVISION ONE

People v. Tang

People v. Tang · No. D084192 · Decided March 18, 2025

SUMMARY

The California Court of Appeal affirmed the denial of Kim H. Tang’s motion for resentencing under Penal Code section 1172.75. The court held that a prior-prison-term enhancement stricken from the judgment is not an enhancement that was “imposed” within the meaning of the statute, and directed the trial court to issue an amended abstract of judgment reflecting the 2002 striking of the enhancement.

CASE DETAILS

COURT	California Court of Appeal, Fourth Appellate District, Division One
WRITING FOR THE COURT	Huffman, Acting P. J.; Do, J.; Rubin, J.
JURISDICTION	California Court of Appeal, Fourth Appellate District, Division One
DECIDED	March 18, 2025
DOCKET	D084192
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tang appealed the denial of his motion for resentencing under California Penal Code section 1172.75.
STANDARD OF REVIEW	De novo review of the interpretation of Penal Code section 1172.75 and the defendant's eligibility for resentencing.
PRECEDENTIAL VALUE	published and precedential; certified for publication
PARTIES	Kim H. Tang v. The People

TOPICS

- sentence modification
- post-conviction relief
- sentencing
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- sentencing
- post-conviction relief
- appellate procedure

QUESTIONS PRESENTED

1. Whether a prior-prison-term enhancement that was stricken from the judgment on appeal qualifies as a sentence enhancement that was imposed under Penal Code section 1172.75, subdivision (a), thereby entitling the defendant to resentencing.
2. Whether the abstract of judgment's continued description of the enhancement as imposed and stayed establishes eligibility for section 1172.75 resentencing despite the appellate judgment striking the enhancement.

HOLDINGS

1. A prior-prison-term enhancement that was stricken from the judgment is not a sentence enhancement that was imposed within the meaning of Penal Code section 1172.75, subdivision (a), and therefore does not trigger eligibility for resentencing under that statute.
2. The abstract of judgment does not control when the operative appellate judgment struck the enhancement; the trial court properly determined that the judgment did not include a qualifying enhancement despite the unamended abstract's description of the enhancement as imposed and stayed.

KEY QUOTATIONS

“We agree with the People that a stricken enhancement cannot be a “sentence enhancement that was imposed” under section 1172.75, subdivision (a).” (at 4)

“It would be anomalous to conclude that an enhancement was both imposed by and stricken from the judgment.” (at 5)

“The statute and the legislative history refer to whether the judgment, not the abstract of judgment, includes a prison prior enhancement.” (at 7)

“We address only whether a stricken enhancement can be an enhancement imposed within the meaning of section 1172.75 and conclude it cannot.” (at 8)

FACTUAL BACKGROUND

In 2001, a jury convicted Tang of first degree murder with a deadly-weapon enhancement. The trial court found true a prior-prison-term enhancement under Penal Code section 667.5, subdivision (b), initially imposed and stayed it, and imposed other sentence enhancements. On Tang's prior appeal, the Court of Appeal modified the judgment to strike the prior-prison-term enhancement itself under *People v. Jones*.

PROCEDURAL HISTORY

A jury convicted Tang of first degree murder and related enhancements in 2001. The superior court imposed and stayed a one-year prior-prison-term enhancement under Penal Code section 667.5, subdivision (b). On Tang's 2002 appeal, the Court of Appeal modified the judgment to strike that enhancement. Tang later sought resentencing under section 1172.75, but the superior court denied relief because the enhancement had been stricken; the Court of Appeal affirmed and directed correction of the abstract of judgment.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The trial court must issue an amended abstract of judgment reflecting that the Penal Code section 667.5, subdivision (b) enhancement was stricken in 2002 and forward the amended abstract to the Department of Corrections.

CASES CITED

- People v. Tang, No. D037456 (Cal. Ct. App. May 21, 2002) (unpublished)
- People v. Jones, 5 Cal. 4th 1142 (1993)
- People v. Lewis, 11 Cal. 5th 952, 961 (2021)
- People v. Renteria, 96 Cal. App. 5th 1276, 1280-1283 (2023)
- People v. Rhodius, 97 Cal. App. 5th 38, 41, 43-48 (2023), review granted Feb. 21, 2024, S283169
- People v. Christianson, 97 Cal. App. 5th 300, 305-307, 311-316 (2023), review granted Feb. 21, 2024, S283189
- People v. Saldana, 97 Cal. App. 5th 1270, 1272-1279 (2023), review granted Mar. 12, 2024, S283547
- People v. Mayberry, 102 Cal. App. 5th 665, 668 (2024), review granted Aug. 14, 2024, S285853
- People v. Espino, 104 Cal. App. 5th 188, 194, 196-197 (2024), review granted Oct. 23, 2024, S286987
- Estate of Sapp, 36 Cal. App. 5th 86, 109 n.9 (2019)
- People v. Gonzalez, 43 Cal. 4th 1118, 1125-1130 (2008)
- People v. Fuentes, 1 Cal. 5th 218, 225-226 (2016)