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Panel says judge erred in vacating plea and sentence

The Orange County judge issued a new sentence after the victim got a chance to speak.



ARSENIAN

SANTA ANA — An Orange County Superior Court judge erred when he vacated a hit-and-run drunken driver's plea and sentencing because the victim was absent and didn't get to speak, a 4th District Court of Appeal panel has ruled.

Judge Scott A. Steiner must reinstate the defendant's original guilty plea and impose a sentence no greater than the two-year sentence he first imposed, according to an unpublished opinion by Presiding Justice Kathleen E. O'Leary and Justices Raymond J. Ikola and Richard D. Fybel.

The opinion, issued Monday, was per curiam, without a named author. It granted a writ petition filed by Santa Ana attorneys Benjamin A. Arsenian and Sierra E. Nelson of the Law Offices of Benjamin Arsenian on behalf of Jorge Perez that sought to halt the four-year sentence imposed by Steiner in December. It means Perez is guaranteed no more than two years behind bars.

It also means Perez's victim won't have a say in his punishment: prosecutors acknowledged they mistakenly didn't inform her of

the original proceedings.

"We're disappointed that it didn't go the way we hoped," Michelle Van Der Linden, spokeswoman for the Orange County district attorney's office, said Tuesday. "We obviously did everything within our power to make sure the victim and victim's family member were heard."

Arsenian said he was ecstatic about the decision. He said allowing Steiner's decision to stand could enable any defendant to withdraw a plea if a victim wasn't present at sentencing.

"It would just wreak havoc there at the courts," Arsenian said. "I couldn't even imagine that happening, and I think the Court of Appeal kind of picked up on that as well."

Prosecutor John R. Maxfield, an Orange County deputy district attorney, filed a motion to reconsider the first sentence imposed by Steiner last October after realizing Perez's victim wasn't notified about the sentencing, despite her desire to speak pursuant to Marsy's Law, a victims' bill of rights that's part of the state constitution.

Steiner granted the motion and, after a hearing in December that included impact statements from the victim's mother, imposed Maxfield's requested sentence of four years and four months in prison.

The victim's mother said she had at least four victim impact statements that weren't provided to the court, and she said the district attorney's office "had not secured her or her daughter's rights under the California Constitution," according to Maxfield's opposition to Arsenian's petition, which blamed Steiner for sentencing Perez without asking Maxfield if the victim wished to speak. *Perez v. Orange County Superior Court*, G055750 (Cal. App. 4th Dist. Jan. 22, 2018).

Arsenian, who argued for probation, noted that Steiner vacated the sentence despite having imposed it as an indicated sentence that depended on Perez pleading guilty to his charges — hit and run with injury, driving on a suspended or revoked license and two counts of driving under the influence of alcohol causing bodily injury — and admitting a sentencing enhancement for great bodily injury. Steiner then dropped the enhancement for sentencing.

Irvine sole practitioner Michael L. Fell filed an amicus brief on behalf of the National Crime Victim Law Institute at Lewis & Clark Law School in Portland, Oregon, as well as the victim and her mother, that said the case “presents a narrow question with far reaching import” regarding the proper remedy for the violation of a victim’s constitutional right to be heard. Allowing a plea and sentence to be vacated and recalled is the only way to remedy such a violation, and it’s “wholly consistent with the constitutional rights of all involved.”

The appellate panel disagreed, noting that Maxfield conceded in his opposition that Arsenian’s petition has merit because state Penal Code section 1170 allows a judge to recall a sentence within 120 days only if the new sentence is not greater than the original.

Van Der Linden said the case had been handled by several prosecutors, and a note in the file indicating the victim was to be notified of the plea and sentencing was overlooked. The office has implemented new procedures that involve “being more vigilant and being more thorough in everything we do.”

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