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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DIAZ MORENO,

Defendant and Appellant.

B232536

(Los Angeles County
Super. Ct. No. KA091585)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Steven D. Blades, Judge. Dismissed.

Thomas K. Macomber, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and
Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Anthony Diaz Moreno appeals from the judgment entered following his conviction by jury of assault with a deadly weapon and battery. His sole contention is that the trial court erred by imposing a concurrent six-month term for the battery. As defendant had served that term when sentence was imposed, we conclude the issue is moot. Accordingly, we dismiss his appeal.

FACTUAL AND PROCEDURAL BACKGROUND¹

In May of 2010, the victim, Patricio Garcia, lived in a home with defendant and others. Garcia was accused of inappropriately touching his girlfriend's granddaughter. As a result, Garcia was asked to move out of the residence, and he agreed. On August 9, 2010, Garcia returned to pick up his belongings. Garcia was in a bedroom when defendant approached and struck Garcia in the eye with a flashlight. Garcia fell toward the bed, and defendant, still wielding the flashlight, hit him in the back of the head. Garcia suffered a fractured eye socket and a laceration to the back of his head. He was hospitalized for nine days due to his injuries.

Defendant was charged with aggravated mayhem (count 1) and assault with a deadly weapon (count 2). (Pen. Code, §§ 205, 245, subd. (a)(1).)² With respect to the assault, defendant was accused of inflicting great bodily injury upon the victim. (§ 12022.7, subd. (a).) Defendant also was alleged to have suffered two prior serious felony convictions and to have served a prior prison term. (§§ 667, subs. (a) & (b)-(i), 1170.12, subs. (a)-(d), 667.5, subd. (b).)

On February 24, 2011, the jury found defendant guilty of the assault as charged in count 2 and of the lesser offense of battery in count 1. In a bifurcated court trial, defendant's prior allegations were found to be true. Defendant's motion filed pursuant to

¹ As defendant challenges only his sentence, we set forth an abbreviated version of the evidence presented.

² All further statutory references are to the Penal Code.

People v. Superior Court (Romero) (1996) 13 Cal.4th 497 was granted, with the court striking one of defendant's prior serious felony convictions alleged under the "Three Strikes" law.

Defendant was sentenced to 22 years in state prison. For the assault, defendant received the high term of four years, which was doubled to eight years pursuant to the Three Strikes law. His sentence was increased by three years for the great bodily injury enhancement, five years for each of the two prior serious felony convictions, and one year for the prior prison term. Defendant was sentenced to a concurrent six-month term in the county jail for the battery. He was given 245 days of custody credit and 36 days of conduct credit.

DISCUSSION

Defendant contends the court violated section 654 by imposing a concurrent term for the battery conviction. He argues that the battery and the assault were committed during the same indivisible course of conduct and he harbored the same intent with respect to both crimes. As a result, he urges, his sentence for the battery must be stayed. The Attorney General claims that the issue is moot because defendant has already served the six-month county jail sentence imposed for the battery. Defendant counters that the trial court's sentence was illegal and must be corrected. We agree with the Attorney General.

Generally, where no effective relief can be granted to the appellant, his or her appeal is moot and will be dismissed. (*People v. Travis* (2006) 139 Cal.App.4th 1271, 1280.) Defendant is asking this court to stay a sentence he has already served. (In fact, he had already completed the six-month term at the time judgment was pronounced.) Staying the sentence for the misdemeanor battery will provide defendant no effective relief. He will not be entitled to any additional credits against his state prison sentence, as the court gave him 281 days of credit against both sentences. As a result, the issue before us is moot. (See *In re Hoddinott* (1996) 12 Cal.4th 992, 996 [where habeas corpus

petitioner had been released from state prison commitment and term of parole on challenged sentence, the issue was “technically moot”].) Although we could properly consider defendant’s appeal if it involved a “recurring issue of public importance” (*ibid*), that is not the case here.

DISPOSITION

The appeal is dismissed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.