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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID SINSUN,

Defendant and Appellant.

2d Crim. No. B237028
(Super. Ct. No. 2011003023)
(Ventura County)

David Sinsun appeals from the judgment after a jury convicted him of street terrorism (count 1; Pen. Code, § 186.22, subd. (a))¹, assault with a deadly weapon (ADW – count 2; § 245, subd. (a)(1)), and battery with serious bodily injury (count 3; § 243, subd. (d)) with special findings that: the crimes were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)); that appellant personally used a deadly weapon and inflicted great bodily injury on the victim (§ 12022.7, subd. (a)); 12022, subd. (b)(2)); and that appellant has suffered a prior strike conviction (§§ 667, subds. (c)(1) & (e)(1); 1170.12, subds. (a)(1) & (c)(1)), a prior serious felony (§ 667, subd. a(1)), and two prior prison terms (§ 667.5, subd. (b)). We strike the one-year prior prison enhancement with respect to appellant's 2006 conviction which is the basis for the five-year prior serious felony enhancement, and stay the four-year sentence on count 1

¹ All statutory references are to the Penal Code.

for street terrorism (§ 654; *People v. Mesa* (2012) 54 Cal.4th 191, 201). Appellant's sentence is reduced from 21 years to 20 years state prison. As modified, the judgment is affirmed.

The evidence shows that appellant, a Colonia Chiques gang member, assaulted a jail inmate with a razor after appellant received a gang letter ordering him to beat the victim. Selecting count 2 (ADW) as the base term, the trial court sentenced appellant to 21 years state prison based on the following sentence calculation: on count 2 the court imposed a three-year sentence doubled to six years based on the prior strike and added five years on the gang enhancement, plus three years on the great bodily injury enhancement, plus five years on the prior serious felony conviction, plus two years (one year for each prior prison enhancement) on the prior prison enhancements. Appellant was sentenced to four years on count 1 for street terrorism, to run concurrent to the sentence on count 2. A six-year sentence was imposed on count 3 for battery with serious bodily injury and stayed pursuant to section 654.

Prior Prison Enhancement

Appellant argues, and the Attorney General agrees, that the 2006 prior prison enhancement must be stricken because the trial court imposed a five-year serious felony enhancement on the same 2006 conviction (case number 2005041758). "[W]hen multiple statutory enhancement provisions are available for the same prior offense, one of which is a section 667 enhancement, the greater enhancement, but only that one, will apply." (*People v. Jones* (1993) 5 Cal.4th 1142, 1150.) We strike the one-year prior prison enhancement with respect to the 2006 prior conviction bearing case number 2005041758. .

Stay of Four-Year Sentence on Count 1 For Street Terrorism

On count 1 for street terrorism, the trial court imposed a four-year term, to run concurrent to the sentence on count 2 for ADW. The Attorney General agrees that the sentence on count 1 must be stayed pursuant to section 654 because the ADW (count

2) is the gang-related crime/underlying felony which forms the basis for the conviction on count 1 for street terrorism. (*People v. Mesa, supra*, 54 Cal.4th at p. 201.)

Conclusion

We modify the judgment to: (1) strike the one-year prior prison enhancement arising out of the 2006 conviction in case number 2005041758; and (2) stay the four-year sentence on count 1 for street terrorism pursuant to section 654. The trial court is directed to amend the November 2, 2011 sentencing minute order and abstract of judgment to reflect the above modifications and to further reflect that appellant was sentenced to 20 years state prison. The superior court clerk is directed to forward certified copies of the amended November 21, 2011 sentencing minute order and amended abstract of judgment to the California Department of Corrections and Rehabilitation.

The judgment as modified is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Brian J. Back, Judge
Superior Court County of Ventura

Miriam R. Arichea, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
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