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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

COREY JAMAL JOHNSON,

Defendant and Appellant.

B239193

(Los Angeles County
Super. Ct. No. BA318031)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Charlene F. Olmedo, Judge. Affirmed, as modified.

Maxine Weksler, 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, Victoria B. Wilson and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Corey Jamal Johnson appeals from the sentence imposed by the trial court following this court's remand to the trial court for resentencing. We modify Johnson's sentence, and as modified, affirm.

DISCUSSION

In 2008, a jury convicted appellant Corey Jamal Johnson (and a co-defendant who is not a party to this appeal) of attempted premeditated murder and multiple robberies of multiple victims committed over two nights in January 2007. The jury found true a number of gun and gang enhancements. For appellant's robberies of victims Melvin Alegria and Vanessa Castro labeled counts six and seven of the People's charging information, the court sentenced appellant to a term of seven years and eight months in prison and imposed gang and gun enhancements. For appellant's assault with a firearm of victim Mark Huddleston labeled count three of the charging information, the court initially imposed a consecutive term of five years and eight months, but then recalled the judgment and instead sentenced appellant to a concurrent term of 17 years.

Appellant appealed from the judgment and sentence. In an unpublished decision, we ordered modification of appellant's sentence by directing the trial court to stay the gang enhancements under counts six and seven for the robberies of Alegria and Castro. (*People v. Bowers et al.* (Apr. 18, 2011, B215679)[nonpub.opn.][at pp. 21-22].) We affirmed the judgment in all other respects. Our decision's DISPOSITION stated, "As to appellant Corey Jamal Johnson, the matter is remanded for resentencing for his convictions for the robberies of Vanessa Castro and Melvin Alegria for which the court shall stay the section 186.22, subdivision (b)(1) gang enhancement. In all other respects the judgment is affirmed as to Corey Jamal Johnson." (*Id.* at p. 27.)

Following remand to the trial court, the prosecutor correctly told the court that staying the gang allegations for counts six and seven "was the only change that the Court of Appeal has instructed this court to apply." The People's sentencing memorandum emphasized our remand's narrow scope, stating, "The Court of Appeal has instructed [the trial] court to modify Corey Johnson's sentence by deleting 3 4/10 years initially imposed

on each of counts 6 and 7. The court upheld the jury's finding and the court's sentence of Mr. Johnson in all other respects." But in reciting the other terms imposed under appellant's sentence, the People's sentencing memorandum (and defense counsel and the trial court) apparently through inadvertence overlooked the trial court's pre-appeal recall and resentencing for appellant's assault by a firearm of Mark Huddleston under count three. The sentencing memorandum thus erroneously stated appellant's punishment for that offense was a consecutive term of five years and eight months, when it was actually a concurrent term of 17 years. Hence, when the trial court upon remand imposed a consecutive term of five years and eight months for count three, neither the court nor the parties realized that the court was exceeding the scope of our remand order by changing the sentence for count three.

Appellant appeals from the court's modification of his sentence for count three. He contends the trial court had jurisdiction only to stay the gang enhancements under counts six and seven, and the modification of the term for count three was unauthorized. The Attorney General agrees. "Following appellate affirmance of a trial court judgment and issuance of a remittitur, 'the trial court is revested with jurisdiction of the case, *but only to carry out the judgment as ordered by the appellate court.*'" (*People v. Picklesimer* (2010) 48 Cal.4th 330, 337, italics in original.) Our unpublished decision directed the trial court to stay two gang enhancements and affirmed the rest of the judgment. Accordingly, we shall direct the clerk of the superior court to correct the abstract of judgment to show that the sentence imposed for count three following remand is, as stated in the original 2009 judgment, a concurrent term of 17 years. As modified, the judgment is affirmed.

As both parties note, *People v. Burbine* (2003) 106 Cal.App.4th 1250 is distinguishable. There, the appellate court's remand for resentencing permitted the trial court to reconsider the defendant's entire sentence. (*Id.* at pp. 1254, 1258-1259.) Here, in contrast, we did not vacate the original sentence; instead, we ordered the trial court to stay two gang enhancements and otherwise affirmed the judgment -- nothing more, nothing less.

DISPOSITION

The trial court is directed to correct the abstract of judgment to show a concurrent term of 17 years for count three and to forward a copy of the corrected abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.