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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.

BRANDIN MICHAEL NORRIS,

Defendant and Appellant.

2d Crim. No. B240087
(Super. Ct. No. 2011012221)
(Ventura County)

A felony information charged appellant Brandin Michael Norris with assault with a deadly weapon by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) (count 1); leaving the scene of an accident (Veh. Code, § 20001, subd. (a)) (count 2); and driving with a suspended license (Veh. Code, § 14601.2, subd. (a)) (count 3). The information further alleged as to counts 1 and 2 that Norris personally inflicted great bodily injury within the meaning of Penal Code section 12022.7, subdivision (a).

Before trial, Norris pled guilty to count 3. At the close of the prosecution's case-in-chief in his jury trial, Norris waived his remaining trial rights, pled guilty to leaving the scene of an accident (count 2) and admitted the great bodily injury allegation, in exchange for a sentence that would not exceed six years in state prison. The trial court "accept[ed] the plea agreement of the parties," dismissed count 1 and imposed a seven-

year sentence, consisting of the high term of four years on count 2, plus three years for the great bodily injury enhancement.¹ Norris received 378 days of presentence custody credits. He appeals from the judgment and sentence following his guilty plea. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).)

Norris contends, and the People agree, his sentence is unlawful because it exceeds the maximum sentence in the plea agreement. “When a guilty plea is entered in exchange for specified benefits such as the dismissal of other counts or an agreed maximum punishment, both parties, including the state, must abide by the terms of the agreement.” (*People v. Walker* (1991) 54 Cal.3d 1013, 1024, overruled on other grounds as stated in *People v. Villalobos* (2012) 54 Cal.4th 177, 182-186.) Penal Code section 1192.5 specifies that if a plea agreement is approved by the court, the defendant “cannot be sentenced on the plea to a punishment more severe than that specified in the plea” If the trial court considers the plea bargain to be unacceptable, its remedy is to reject it, not to violate it, directly or indirectly. (*People v. Segura* (2008) 44 Cal.4th 921, 931-932.)

Here, the plea agreement provided that the maximum sentence Norris would receive was six years in state prison. The trial court violated the plea agreement by sentencing him to seven years. The People acknowledge this was improper and appropriately request that we remand the matter for resentencing.

Accordingly, the sentence is vacated, and the matter is remanded for resentencing in accordance with the plea agreement. In all other respects, the judgment is

¹ Norris also received a consecutive eight-month sentence in an unrelated case.

affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Patricia M. Murphy, Judge
Superior Court County of Ventura

California Appellate Project, Jonathan B. Steiner, Executive Director, Richard B. Lennon, Staff Attorney, 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, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, David E. Madeo, Deputy Attorney General, for Plaintiff and Respondent.