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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE

Plaintiff and Respondent,

v.

MOISES BARRERA,

Defendant and Appellant.

B267997

(Los Angeles County
Super. Ct. No. BA437768)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed with directions.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Moises Barrera appeals from the judgment entered upon his convictions of driving under the influence of alcohol (count 1) and driving with a blood-alcohol content of .08 percent or more (count 2), with admissions he suffered a prior felony conviction for driving under the influence of alcohol and a prior felony conviction for driving with a blood-alcohol content of .08 percent or more. (Veh. Code, §§ 23152, subds. (a) & (b), 23550.5, subd. (a).) The court sentenced appellant to three years in state prison on count 1 and three years in state prison stayed as to count 2. We affirm with directions.

FACTUAL and PROCEDURAL SUMMARY

A detailed recitation of the facts is unnecessary to resolve this appeal. At 9:00 p.m. on June 4, 2015, appellant drove a Nissan automobile on the wrong side of the street and into a parked Envoy SUV. The SUV's owner and another person restrained appellant until police arrived. A blood sample drawn from appellant at 11:33 p.m. revealed a blood-alcohol level of .16 percent.

At sentencing on October 20, 2015, as to count 1, the court stated, "I order that Mr. Barrera serve the high term of three years in state prison." As to count 2, the court stated, "He is also sentenced to the high term in state prison. However, that is stayed pursuant to Penal Code section 654."

The abstract of judgment contains boxes in which the court clerk may place an "X" to indicate whether the sentence on a count is "concurrent" or a "654 stay." In the present case, the abstract of judgment reflects, as to count 2, an "X" in the "concurrent" box, indicating the court imposed a concurrent sentence on count 2. There is no "X" in the "654 stay" box.

ISSUE

Appellant claims the abstract of judgment must be corrected to reflect the sentencing court's oral pronouncement of judgment on count 2.

DISCUSSION

The Abstract of Judgment Must Be Corrected.

Penal Code section 654 bars multiple punishment on counts 1 and 2. (Cf. *People v. Subramani* (1985) 173 Cal.App.3d 1106, 1110-1111 (*Subramani*); *People v. Duarte* (1984) 161 Cal.App.3d 438, 440, 445-447 (*Duarte*.) Pursuant to section 654, the sentencing court imposed a three-year prison sentence on count 2 and correctly stayed execution of that sentence pending appellant's completion of his sentence on count 1. (Cf. *People v. Duff* (2010) 50 Cal.4th 787, 796; *Subramani*, at p. 1111; *Duarte*, at p. 447.)

The abstract of judgment erroneously reflects that the sentencing court imposed a concurrent sentence on count 2. (Cf. *People v. Jones* (2012) 54 Cal.4th 1, 89; *People v. Humiston* (1993) 20 Cal.App.4th 460, 466, fn. 3, *Subramani, supra*, 173 Cal.App.3d at p. 1111.) The abstract of judgment must be corrected as to count 2 by deleting the "X" in the "concurrent" box and placing an "X" in the "654 stay" box.

Respondent concedes the sentencing court properly stayed pursuant to Penal Code section 654 the sentence on count 2 and that the abstract of judgment must be corrected. We direct the sentencing court to make the correction.

DISPOSITION

The judgment is affirmed with directions. The sentencing court is directed to forward to the Department of Corrections and Rehabilitation an amended abstract of judgment reflecting a stayed not concurrent sentence on count 2.

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STRATTON, J.*

We concur:

EDMON, P. J.

ALDRICH, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.