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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sierra)

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNY LAWRENCE DANERI,

Defendant and Appellant.

C068948

(Super. Ct. Nos.
CR02800X, CR02801X)

Defendant Denny Lawrence Daneri entered a no contest plea in Plumas County case No. F10-00936 to committing an act of spousal abuse and driving under the influence in exchange for (among other things) dismissal of an allegation he committed the spousal abuse offense while on bail (Pen. Code, § 12022.1);¹ he received probation.

¹ Undesignated statutory references are to the Penal Code.

After the case was transferred for supervision to Sierra County and assigned Sierra County case No. CR02801X, defendant admitted violating his probation, and he was sentenced to state prison for five years. As relevant to this appeal, defendant's state prison sentence included a two-year on-bail enhancement imposed in Sierra County case No. CR02801X pursuant to section 12022.1.²

On appeal, defendant contends that the trial court imposed the enhancement in error; the People agree, as do we.

At all times relevant here,³ section 12022.1 provided that an on-bail enhancement allegation "shall be pleaded in the information or indictment which alleges the secondary offense, or in the information or indictment of the primary offense if a conviction has already occurred in the secondary offense, and shall be proved as provided by law." (Former § 12022.1, subd. (c).) Unless the defendant admits the allegation, the prosecution "must prove the truth of the enhancing allegation at trial." (*People v. Adams* (1993) 6 Cal.4th 570, 572-573.)

² In the same proceeding, defendant was sentenced in Sierra County case No. CR02800X, which was the number assigned upon transfer for probation supervision of what had been Plumas County case No. FL10-00791.

³ Former section 12022.1 was repealed and reenacted, effective January 1, 2012 (Stats. 2010, ch. 711, §§ 4, 5.) Section 12022.1 now "continues former Section 12022.1 without change. [38 Cal. Law Revision Com. Rep. (2009) p. 217]." (Cal. Law Revision Com. com., 51D pt. 1 West's Ann. Pen. Code (2012 Cum. Pocket Part) note foll. § 12022.1, p. 53.)

The enhancement under section 12022.1, subdivision (b) was alleged in the original information in Plumas County case No. F10-00936, but defendant neither admitted the allegation nor waived trial of it. Moreover, sentencing defendant on the on-bail enhancement violated the parties' plea agreement, because the allegation was ordered stricken by the trial court as a term of defendant's plea, and he was informed his sentence would include no term attributable to that enhancement.

The enhancement was thus an unauthorized sentence and must be stricken. (*People v. Mancebo* (2002) 27 Cal.4th 735, 749-750, fn. 7.)

DISPOSITION

The superior court clerk is directed to amend the sentencing minutes and the abstract of judgment to reflect that the on-bail enhancement is stricken, and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. As amended, the judgment is affirmed.

BUTZ, J.

We concur:

HULL, Acting P. J.

MAURO, J.