

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES LAWRENCE MARSHALL,

Defendant and Appellant.

E052556

(Super.Ct.No. FSB804867)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ronald M.

Christianson, Judge. Affirmed in part, reversed in part with directions.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Kevin Vienna, Deputy Attorney General, for Plaintiff and Respondent.

## **INTRODUCTION**

On April 28, 2010, following a jury trial in San Bernardino County Superior Court, case No. FSB804867, defendant and appellant Charles Lawrence Marshall (defendant) was found guilty of willfully evading a peace officer under Vehicle Code section 2800.2, subdivision (a).<sup>1</sup> On the same day, the trial court found true the two strike prior conviction allegations under Penal Code sections 667, subdivisions (b)-(i), and 1170.12, subdivisions (a)-(d); and two prior prison term allegations under Penal Code section 667.5, subdivision (b).

On December 6, 2010, the trial court denied defendant's motion to dismiss his strike prior convictions. The court then sentenced defendant to a three strikes term of 25 years to life.

On December 17, 2010, defendant filed a timely notice of appeal.

## **STATEMENT OF FACTS**

At approximately 11:45 p.m. on December 5, 2008, Officer Nicholas Koahou of the San Bernardino Police Department was on routine patrol when he saw a blue GMC Sierra truck driven by defendant bypass several cars at the intersection, and proceeded to follow him. The officer clocked defendant going 50 miles per hour where the posted speed limit was 35 miles per hour. The officer also watched as defendant tailgated

---

<sup>1</sup> Defendant was on probation in case No. FSB802100 at the time of the instant offense. We need not discuss matters related to case No. FSB802100 on appeal as defendant does not challenge any aspect of the sentence or other proceedings in that case.

various cars and then swerved between lanes. The officer activated his overhead lights to signal defendant to pull over; defendant failed to do so. After using the air horn a couple of times to get defendant's attention, defendant finally pulled over. When the officer got out of his patrol car, defendant took off.

Officer Koahou tried to catch up to defendant as defendant sped at nearly 80 miles per hour first through a stop sign then a stop light, continuing until defendant hit a traffic pole. Defendant's truck then came to rest on the sidewalk. The officer drew his gun and cautiously approached the truck. Defendant responded by trying to accelerate, but he merely spun the rear wheels of the truck. Defendant then jumped out of the truck, crying and moaning as he did so. The officer, assisted by other arriving officers, ordered defendant to the ground. Defendant was arrested and handcuffed.

### **ANALYSIS**

Defendant's sole contention on appeal is that the trial court erred in imposing, and then staying, the term for the two prior prison term enhancements. Defendant notes that the trial court was required to either impose or strike the enhancements. Defendant, therefore, requests that the matter be remanded for the limited purpose to permit the trial court to impose or strike the two prior prison term enhancements. The People agree with defendant.

A trial court must either impose or strike a prior prison term enhancement pursuant to Penal Code section 667.5, subdivision (b). (*People v. Langston* (2004) 33 Cal.4th 1237, 1241 [“the trial court may not stay the one-year enhancement, which is

mandatory unless stricken”]; *People v. Campbell* (1999) 76 Cal.App.4th 305, 311 [“the court must either impose the prior prison enhancements or strike them”].) The trial court must provide a rationale for using its discretion to strike a mandatory prior conviction enhancement. (*People v. Jordan* (2003) 108 Cal.App.4th 349, 368.)

Here, the trial court imposed a sentence of 25 years to life under the three strikes law. The court then stayed the one-year terms for the two prior prison term enhancements “in the interest of justice” because of the significant three strikes sentence already imposed, and because the court had used the prison terms in denying defendant’s motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The trial court, however, erred in staying the two enhancement terms. “The failure to impose or strike an enhancement is a legally unauthorized sentence subject to correction for the first time on appeal. [Citations.]” (*People v. Bradley* (1998) 64 Cal.App.4th 386, 391.)

Therefore, we must reverse the unauthorized sentence and remand for resentencing. On remand, the trial court must either strike defendant’s prior prison term enhancements, with stated reasons for doing so, or impose the enhancements to run consecutive to the others and to the principal count as required by Penal Code section 667.5, subdivision (b).

#### **DISPOSITION**

That portion of the judgment staying imposition of the punishment for the enhancements under Penal Code section 667.5, subdivision (b) is reversed. The trial court is directed to hold a new sentencing hearing and either impose the enhancements or

strike them in accordance with the dictates of Penal Code section 1385. The court shall resentence defendant accordingly and forward an amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER  
J.

We concur:

HOLLENHORST  
Acting P.J.  
RICHLI  
J.