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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSIE GOMEZ,

Defendant and Appellant.

E060416

(Super.Ct.No. FVA1301649)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ingrid A. Uhler, Judge. Modified and affirmed with directions.

Sheila Quinlan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Senior Assistant Attorney General, Charles C. Ragland and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jessie Gomez is serving 11 years in prison after a jury convicted him of second degree robbery (Pen. Code, § 211)¹ and found true three allegations based on a 2007 conviction for assault with a firearm (§ 245, subd. (a)(2)). The three allegations are: a prior strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), a serious felony prior (§ 667, subd. (a)(1)), and a prison prior (§ 667.5, subd. (b)). Defendant argues, the People concede and this court agrees, that the one-year enhancement for the prison prior must be stricken because a court may not use the same prior conviction to impose both a serious felony enhancement and a prison term enhancement.

DISCUSSION

On the night of September 12, 2013, defendant asked the victim to use his cellular telephone and then refused to give it back and told the victim to “just go.” Defendant told the victim that defendant was the devil, and began to count backwards from five while shaking and rolling his eyes back into his head. The victim was “creeped out” and ran away to find help. Police apprehended defendant later that night at a Metrolink station with the cell phone in his possession.

On October 10, 2013, the People filed an information charging defendant with second degree robbery. The People also alleged a strike prior, a serious felony prior, and a prison term prior, all based on a single conviction for assault with a firearm from 2007.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

On December 11, 2013, a jury convicted defendant of robbery and found true each of the three prior offense allegations true.

On January 10, 2014, the trial court sentenced defendant to the mid-term of three years for the robbery, doubled to six years for the strike prior, plus a five-year consecutive term for the serious felony prior. The court then imposed but stayed a one-year sentence for the prison term prior.

This appeal followed.

DISCUSSION

Defendant contends, and the People agree, that the trial court erred by imposing a one-year sentence for the prison term enhancement that was based on the same conviction (assault with a firearm) as the five-year sentence for the serious felony enhancement. We also agree.

“[W]hen multiple statutory enhancement provisions are available for the same prior offense, one of which is a section 667 enhancement, the greatest enhancement, but only that one, will apply.” (*People v. Jones* (1993) 5 Cal.4th 1142, 1150.) The same conviction underlies defendant’s section 667.5, subdivision (b) one-year prior prison enhancement and defendant’s section 667, subdivision (a)(1) five-year serious felony prior enhancement. Accordingly, the one-year prison prior enhancement for that conviction must be stricken.

DISPOSITION

The judgment is modified to strike the one-year term for the prison prior enhancement under section 667.5, subdivision (b). The trial court is ordered to correct the abstract of judgment and to transmit a corrected copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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GAUT

J.*

We concur:

MILLER

Acting P. J.

CODRINGTON

J.

* Retired Associate Justice of the Court of Appeal, Fourth Appellate District, Division Two, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.