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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

VICENTE ADAM PEREZ,

Defendant and Appellant.

F062029

(Super. Ct. No. BF130230A)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. Sidney P. Chapin, Judge.

Susan K. Shaler, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Dawson, J. and Kane, J.

Defendant Vicente Adam Perez<sup>1</sup> was convicted of receiving stolen property. His sentence included three prior prison term enhancements. On appeal, he contends the prior prison term imposed for an in-prison crime did not constitute a “prior separate prison term” within the meaning of section 667.5, subdivision (b). We disagree and will affirm.

### **PROCEDURAL SUMMARY**

On May 17, 2010, the Kern County District Attorney charged defendant with receiving stolen property (§ 496, subd. (a)). The information further alleged defendant had served five prior prison terms pursuant to section 667.5, subdivision (b).

A jury found defendant guilty and the trial court found all five prior prison term allegations true. The court sentenced defendant to three years in prison, plus three consecutive one-year prior prison term enhancements.<sup>2</sup>

### **DISCUSSION**

Defendant contends the consecutive sentence he received in 2007 for possessing drugs or alcohol in prison (§ 4573.8) did not result in a separate prison term within the meaning of section 667.5, subdivision (b) because he had not been released from prison when he received the additional time for the 2007 offense. He argues that because he had not completed the term he was serving on the 2006 conviction when he committed the

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<sup>1</sup> The charging document, abstract of judgment, probation report, and other portions of the trial record refer to defendant as Vincente Adam Perez. It has come to our attention that defendant’s true name is Vicente Adam Perez, as reflected in the abstracts of judgment of September 13, 2004, August 21, 2006, and July 5, 2007, as well as his own usage. We refer to defendant by his true name in this opinion. (See Pen. Code, § 953.)

All statutory references are to the Penal Code unless otherwise noted.

<sup>2</sup> The court determined that the first three prior prison terms constituted a single term.

2007 crime, he served only one prison term for the two convictions. Thus, he asserts, he should have received a total of only two prior prison term enhancements.

In 2010, section 667.5, subdivision (b) provided:

“Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows: [¶] ... [¶] (b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.”

Subdivision (g) of the same section provided:

“A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.”

The Supreme Court explained in *People v. Langston* (2004) 33 Cal.4th 1237 that “new crimes committed while in prison are treated as separate offenses and begin a new aggregate term. (*People v. Carr* (1988) 204 Cal.App.3d 774, 780-781; *People v. White* (1988) 202 Cal.App.3d 862, 867-871; see *People v. Walkkein* (1993) 14 Cal.App.4th 1401, 1409-1410 (*Walkkein*); *People v. Cardenas* (1987) 192 Cal.App.3d 51, 59 (*Cardenas*).)” (*Id.* at p. 1242.)

In *Cardenas*, where the defendant raised a challenge like the one in this case, the court explained: “The required ‘continuous completed period of prison incarceration’ in subdivision (g) needed to constitute a separate prison term for purposes of enhancement is equal to the stated prison commitment for the particular offense. [Citation.] Prison commitments commenced after a previous term is ‘completed’ constitute separate periods

of incarceration. [¶] The legislative purpose underlying sentence enhancements is to penalize recidivist defendants by increasing any sentence imposed in each ‘new offense’ in proportion to the number of prior separate prison terms served (§ 667.5). The Legislature enacted [section 1170.1,] subdivision (c), which focuses on new offenses committed while in prison. Logic dictates the statutory scheme be interpreted in a manner which serves the individual purposes of these code sections, provides for similar treatment of new felony offenses whether committed in or out of prison and avoids absurd results when applied. Subdivision (c) is entirely consistent with the Legislature’s intention to increase punishment for repeat offenders in subsequent crimes. By mandating the sentences for in-prison offenses be served only after all other prison terms are completed, subdivision (c) comports with the definition of separate prison terms articulated in *In re Kelly*[ (1983) 33 Cal.3d 267], thus satisfying the condition precedent to imposing sentence enhancements as a consequence of the new offense committed while incarcerated. Nothing in this rule requires the prisoner enjoy a period of freedom between completing an earlier term and the start of the next separate prison commitment.” (*Cardenas, supra*, 192 Cal.App.3d at pp. 59-60.)

We agree with *Cardenas*’s conclusion: “Under [defendant’s] theory, new felony offenses committed in prison could never be used as sentence enhancements. Such a result is absurd. It is inconceivable the Legislature intended a defendant’s subsequent crimes be exempt from recidivist enhancement merely because the offense was committed inside prison walls. Equally absurd is the idea the prisoner must be released, then recommitted to prison to validate the separateness of the two prison terms.” (*Cardenas, supra*, 192 Cal.App.3d at p. 60.)

Defendant urges us to reject the cases cited above and rely instead upon our own case, *People v. Smith* (1985) 166 Cal.App.3d 1003 (abrogated on another ground in *People v. Bullock* (1994) 26 Cal.App.4th 985), in which we concluded only one prior prison term was served when the defendant was convicted and sentenced for an offense

committed while in prison for an earlier offense. As other courts have since observed, that case failed to explain how it reached its conclusion or upon which legal authority it rested. Like those other courts, we decline to follow *Smith*. (See, e.g., *Walkkein, supra*, 14 Cal.App.4th at p. 1410 [“[T]he holding in *Smith* appears in only one 8-line paragraph devoted to the issue and is supported by no analysis. More importantly, it contravenes the express requirements of section 1170, subdivision (c), and undermines the purpose of that section and of section 667.5”]; *Cardenas, supra*, 192 Cal.App.3d at p. 58, fn. 6 [“[T]he court in *Smith* does not explain how it reached this conclusion nor cite any legal authority for it. We decline to follow *Smith*.”].)

We conclude the trial court properly sentenced defendant to three prior prison term enhancements.

#### **DISPOSITION**

The judgment is affirmed.