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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Appellant, v. JUAN RAMON GARCIA, Defendant and Respondent.	F063364 (Super. Ct. No. F10904499) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Brant Bramer, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Elizabeth Egan, District Attorney, and William Lacy, Deputy District Attorney, for Plaintiff and Appellant.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Respondent.

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[*] Before Cornell, Acting P.J., Gomes, J. and Franson, J.

A complaint charged Juan Garcia with, inter alia, two felonies and alleged personal use of a firearm. In a negotiated settlement, the court reduced one of the felonies to a misdemeanor. Garcia pled no contest to both the felony and misdemeanor and admitted the allegation in return for a five-year lid. At sentencing, the court imposed an aggregate four-year sentence and struck the punishment on the allegation. On appeal, the Attorney General challenges the order striking the punishment and requests a remand for resentencing with no limit on the imposition of an aggregate sentence in excess of the five-year lid.

BACKGROUND

On December 2, 2010, a complaint charged Juan Garcia with assault with a firearm (count 1; Pen. Code, § 245, subd. (a)(2))[1] and with active participation in a criminal street gang (count 2; § 186.22, subd. (a)) and alleged, inter alia, his personal use of a firearm in count 1 (§ 12022.5, subd. (a)).

Garcia pled no contest to counts 1 and 2 and admitted personal use of a firearm in return for a lid of no more than five years. The court imposed the aggravated term of four years in state prison on count 1 and time served in county jail on count 2. The court imposed the mitigated three-year term on the firearm allegation but ordered the punishment stricken.

DISCUSSION

The parties agree, and we concur, that a court has no authority to strike the punishment at issue here. (§ 12022.5, subd. (c)). As a general rule, imposition of an enhancement of three, four, or 10 years for personal use of a firearm is mandatory. (*People v. Thomas* (1992) 4 Cal.4th 206, 209-214; *People v. Herrera* (1998) 67 Cal.App.4th 987, 988-989; § 12022.5, subd. (c).) The only issue before us is whether

[1] All further statutory references are to the Penal Code unless otherwise specified.

correction of the court's error allows the imposition of an aggregate sentence in excess of the five-year lid in the negotiated settlement.

The Attorney General argues that the case should be remanded for resentencing with no limitation on the imposition of a greater sentence. Garcia agrees that the case should be remanded for resentencing but argues that the court must conform to the agreed lid of not more than five years in the plea bargain. We agree with Garcia. (See, e.g., *People v. Kaanehe* (1977) 19 Cal.3d 1, 13.)

Plea bargaining is an accepted practice in American criminal procedure. The integrity of the process must be maintained by insuring that the state keep its word when it offers inducements in exchange for a plea of guilty. (*People v. Mancheno* (1982) 32 Cal.3d 855, 859-860.) The goal in providing a remedy for breach of the bargain is to redress the harm caused by the violation without prejudicing either party or curtailing the normal sentencing discretion of the trial judge. (*Id*. at p. 860.)

DISPOSITION

The conviction is affirmed, the judgment is modified to vacate the sentence, and the matter is remanded for the court to determine the appropriate disposition consistent with the views expressed in this opinion.