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

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRANCE NELSON PLEASANT,

Defendant and Appellant.

F068588

(Super. Ct. No. F09905650)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Conness A. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Michael Dolida, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

Defendant Terrance Nelson Pleasant was convicted by jury trial of assault with a deadly weapon, to wit, a knife (Pen. Code, § 245, subd. (a)(1);¹ count 1). He had already pled no contest to carrying a concealed weapon (§ 12025, subd. (b)(6); count 2) and carrying a loaded firearm not registered to him (§ 12031, subd. (a)(2)(F); count 3). On appeal, defendant contends, and the People agree, that the trial court should have stayed the term on either count 2 or count 3 pursuant to section 654. We will modify the judgment and affirm.

BACKGROUND

The probation officer's report recommended that the trial court deny probation and sentence defendant to the midterm of three years on count 1 due to the violence of the stabbing assault. The report did not mention counts 2 and 3, to which defendant had pled. At sentencing, the court imposed a two-year sentence on count 1, stayed execution of that sentence, and granted three years' felony probation. On counts 2 and 3, which were unrelated to the assault in count 1, the court imposed a two-year term on each, both to be served concurrently to the sentence on count 1, and then stayed both terms. The court stated:

“I'm going to find that the two-year term in state prison is the appropriate term. Order [defendant] to serve two years in the California Department of Corrections. I'm going to stay that two-year term. I'm going to place him on probation for three years, but order he serve 180 days in custody. I think it's appropriate he serve some custodial time.... [¶] ... [¶]

“So the record is clear, the two-year term is imposed on the [section] 245 which was the count of conviction in this case. [Defendant] also plead [*sic*] guilty to the, um, Count Two which was the carrying a concealed weapon, that being a firearm in his vehicle, and Count Three carrying a loaded firearm. The facts should be clear the firearms [*sic*] played no part in this offense at all. This was a stabbing. The gun, while illegal, was wholly unrelated [to count 1]. I'll impose the same two-year

¹ All statutory references are to the Penal Code.

term in each of those concurrent for a total term of two years in state prison, stayed, with 180 days in custody to be served as noted.”²

DISCUSSION

“Section 654 precludes multiple punishment for a single act or omission, or an indivisible course of conduct. [Citation.] If, for example, a defendant suffers two convictions, punishment for one of which is precluded by section 654, that section requires the sentence for one conviction to be imposed, and the other imposed and then stayed. [Citation.] Section 654 does not allow any multiple punishment, including either concurrent or consecutive sentences.” (*People v. Deloza* (1998) 18 Cal.4th 585, 591-592.)

The Supreme Court recently reiterated: “‘It has long been established that the imposition of concurrent sentences is precluded by section 654 [citations] because the defendant is deemed to be subjected to the term of *both* sentences although they are served simultaneously.’ [Citation.] Instead, the accepted ‘procedure is to sentence defendant for each count and stay execution of sentence on certain of the convictions to which section 654 is applicable.’ [Citations.] Accordingly, although there appears to be little practical difference between imposing concurrent sentences, as the trial court did, and staying sentence on two of the convictions, as defendant urges, the law is settled that the sentences must be stayed to the extent that section 654 prohibits multiple punishment.” (*People v. Jones* (2012) 54 Cal.4th 350, 353; see *People v. Alford* (2010) 180 Cal.App.4th 1463, 1466, 1468-1469 [when section 654 applies, the trial court cannot impose a concurrent sentence; the court must impose a sentence and stay execution of that sentence].)

² The minute order reflects the sentences on each count and also states: “Execution of State Prison sentence stayed and defendant is placed on 3 Years['] FORMAL PROBATION as to count(s) 1, 2, 3” And it states: “Serve 180 Days Fresno County Jail as to count(s) 1, 2, 3.”

Here, the parties agree that counts 2 and 3 were both based on the same act (defendant's possession of a firearm in his vehicle) and that section 654 prohibits multiple punishment for the two crimes. (*People v. Jones, supra*, 54 Cal.4th at p. 357 [“a single possession or carrying of a single firearm on a single occasion may be punished only once under section 654”].) They agree that imposition of concurrent sentences on both counts 2 and 3 was improper. (*Id.* at p. 353; *People v. Deloza, supra*, 18 Cal.4th at p. 592.) We agree with the parties and will stay one term pursuant to section 654.

DISPOSITION

The judgment is modified to stay the two-year sentence imposed on count 3 pursuant to section 654. The trial court is directed to amend the minute order and forward certified copies to the appropriate entities. As so modified, the judgment is affirmed.