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

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK RAMOS,

Defendant and Appellant.

F068699

(Super. Ct. No. BF145862A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John R. Brownlee, Judge.

Thomas M. Singman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Kane, J. and Smith, J.

Defendant Frank Ramos argues on appeal that two of his four prior serious felony convictions, which enhanced his sentence by 20 years, were brought and tried in the same case and therefore could support only a single enhancement under Penal Code section 667, subdivision (a).¹ The People concede and we agree. Accordingly, we will strike one of the enhancements and affirm in all other respects.

PROCEDURAL SUMMARY

Defendant was convicted by jury trial of second degree robbery (§ 212.5, subd. (c); count 1), assault with a deadly weapon (§ 245, subd. (a)(1); count 2), and two counts of second degree burglary (§ 460, subd. (b); counts 3 & 4). The trial court found true various special allegations, including four prior serious felony convictions under section 667, subdivision (a). The court sentenced defendant to 25 years to life on count 1, plus four 5-year prior serious felony conviction enhancements (20 years) (§ 667, subd. (a)); the same sentence on count 2, stayed pursuant to section 654; six years on count 3, stayed pursuant to section 654; and six years on count 4, to be served consecutively to the sentence on count 1.

DISCUSSION

Defendant contends the trial court should have imposed only three, rather than four, 5-year prior serious felony conviction enhancements because the two felony robbery convictions that occurred in 1981 were brought and tried in the same case.

Section 667, subdivision (a)(1) provides in relevant part that “any person convicted of a serious felony who previously has been convicted of a serious felony ... shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges *brought and tried separately*. The terms of the present offense and each enhancement shall run consecutively.” (Italics added.) “Section 667(a) enhancements must be imposed for

¹ All statutory references are to the Penal Code.

each prior serious felony conviction “separately brought and tried.” The question whether prior convictions were brought and tried separately is for the court to decide, not the jury.” (*People v. Jones* (2015) 236 Cal.App.4th 1411, 1415-1416.) “[I]t is an *element* of the prior serious felony enhancement that the charges be ‘brought and tried separately’ and where, as in this case, multiple serious felonies were proven in a single prior proceeding, the People cannot prove more than one such enhancement exists.” (*Id.* at p. 1416; *People v. Wagner* (1994) 21 Cal.App.4th 729, 732-737; *People v. Deay* (1987) 194 Cal.App.3d 280, 286-290.)

The parties here agree that the two 1981 felony robbery convictions were not brought and tried separately and thus were improperly used to support two enhancements. We will strike one enhancement.

DISPOSITION

One of the two 1981 prior serious felony conviction enhancements (§ 667, subd. (a)) is stricken. Accordingly, the judgment is modified to reflect *three*, not four, prior felony conviction enhancements on counts 1 and 2. As so modified, the judgment is affirmed. The trial court is directed to modify the abstract of judgment and minute order and to forward certified copies to the appropriate entities.