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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ALEXANDER VARGAS,

Defendant and Appellant.

G047358

(Super. Ct. No. 09NF0461)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed as modified.

Christopher Nalls, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Elizabeth M. Carino, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant Miguel Alexander Vargas of one count of first degree murder (Pen Code, § 187, subd. (a))<sup>1</sup> and one count of carjacking (§ 215, subd. (a)). The jury found true that defendant had suffered one prior juvenile adjudication for robbery, which was charged as both a strike (§§ 667, subds. (d), (e)(1), 1170.12, subds. (b), (c)(1)) and a serious prior felony (§ 667, subd. (a)(1)). The court sentenced defendant to 50 years to life on the first degree murder, double the principal term pursuant to the prior strike. It sentenced defendant to a determinate term of 18 years for the carjacking, which was double the upper term pursuant to the prior strike. It then imposed an additional 5 years for the serious prior felony. The court ordered appellant's determinate sentence of 23 years to be served consecutively to his indeterminate sentence of 50 years to life, resulting in a total prison sentence of 73 years to life.

Defendant appealed, raising only a single issue: whether the use of a juvenile adjudication as a strike is constitutional. In a prior opinion, we affirmed, finding ourselves bound, as defendant acknowledged, by *People v. Nguyen* (2009) 46 Cal.4th 1007.

Defendant petitioned for review to the California Supreme Court. The court granted review and transferred the matter back to us (Cal. Rules of Court, rule 8.528(d)) with directions to vacate our decision and consider a new issue: the validity of the serious prior felony enhancement imposed pursuant to section 667, subdivision (a)(1). We invited supplemental briefs from both parties. Both the Attorney General and the defendant agree, as do we, that basing the serious prior felony enhancement on a juvenile adjudication was improper.

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

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All statutory references are to the Penal Code.

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.” In 1982, via Proposition 8, the electorate added article I, section 28 to the state Constitution (the Victim’s Bill of Rights). Subdivision (f)(4) of that section states, “Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding.”

In a well-reasoned opinion, the court in *People v. West* (1984) 154 Cal.App.3d 100, 106 (*West*), considered whether a prior juvenile *adjudication* constituted a felony “conviction” within the meaning of the Victim’s Bill of Rights, such that it may support an enhancement under section 667, subdivision (a)(1). Relying on the principle that minors in juvenile court are not deemed defendants, and that ““adjudications of juvenile wrongdoing are not ‘criminal convictions,’”” the court held juvenile adjudications do not come within the scope of the Victim’s Bill of Rights. (*Id.* at p. 107.) The word “juvenile” in the Victim’s Bill of Rights refers to juveniles who are prosecuted as adults. (*Id.* at p. 108.) The *West* court did not question the power of the electorate to require a five-year enhancement for prior juvenile adjudications, but simply decided they did not do so in this case. (*Id.* at p. 110.) Despite this implied invitation to amend the Victim’s Bill of Rights, neither the electorate nor the Legislature has done so to include juvenile adjudications. The “Three Strikes” law, by contrast, expressly includes certain juvenile adjudications. (§§ 667, subd. (d)(3), 1170.12, subd. (b)(3).) *West* has been cited approvingly. (E.g., *People v. Park* (2013) 56 Cal.4th 782, 798; *People v. Smith* (2003) 110 Cal.App.4th 1072, 1080, fn. 10.)

In light of these principles, we will strike the 5-year enhancement imposed pursuant to section 667, subdivision (a)(1).

## DISPOSITION

The five-year enhancement imposed pursuant to section 667, subdivision (a)(1), is stricken. The trial court is directed to prepare a modified abstract of judgment striking the enhancement imposed pursuant to section 667, subdivision (a)(1), and to send a certified copy of the modified abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.