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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

SOMNANG KIM,

Defendant and Appellant.

H037765

(Santa Clara County

Super. Ct. No. 210962)

Appellant Somnang Kim is a member of a Cambodian gang known as CWA also, at times, referred to as C-Dub. He was charged with three counts of murder, 13 counts of attempted premeditated murder and three counts of assault with a deadly weapon. Special circumstances were alleged on the grounds of multiple counts of murder and killings for a gang purpose. Gang use and gang enhancements were alleged as to each count. Appellant pled guilty as charged on the agreement by the People to withdraw the request for the death penalty. He admitted all of the enhancements including the alleged special circumstance. Appellant was sentenced to life without the possibility of parole for his three murder convictions together with the remaining counts and enhancements appellant received a consecutive sentence of 400 years to life consecutive to 29 years 8 months. On appeal we reversed the judgment on the grounds that the sentence imposed violated the terms of appellant's plea bargaining. We remanded with directions for

resentencing or withdrawal of the plea. The rehearing was held and the People moved to dismiss the Penal Code section 12022.53, subdivisions (b), (c) and (d) charges and the court granted the motion. Thereafter, the court imposed specific sentences as to each count and enhancement that the appellant admitted. The total term was life without possibility of parole concurrent to 24 years to life. Appellant files this appeal on the single ground that imposition of gun use enhancement (Pen. Code, § 12022.5) and gang enhancement involving use of a gun (Pen. Code, § 186.22, subd. (b)(1)(C)) was improper and the case should be remanded for further sentencing. The Attorney General in filing its respondent's brief agreed that the imposition of gun use enhancement (Pen. Code, § 12022.5) and gang enhancement involving use of a gun (Pen. Code, § 186.22, subd. (b)(1)(C)) was improper. We agree and accept the concession.

**DISPOSITION**

The matter is reversed and the matter remanded for resentencing with directions to the trial court to impose a single enhancement on count 15 under either Penal Code section 12022.5 or section 186.22, subdivision (b)(1)(C).

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RUSHING, P.J.

WE CONCUR:

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ELIA, J.

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GROVER, J.\*

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\* Judge of the Monterey County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.