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

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN DEAN RATHJEN,

Defendant and Appellant.

H041612

(Santa Clara County

Super. Ct. No. C1487836)

Defendant Brian Dean Rathjen appeals a judgment entered following defendant's no contest plea to second degree murder, hit-and-run with injury, and other charges. The parties stipulated that defendant was not guilty by reason of insanity, and defendant was committed to the Department of State Hospitals.

On appeal, defendant asserts that his maximum period of confinement should be reduced by one year, because it was improper for him to be charged for two hit-and-runs stemming from the same accident. The Attorney General concedes.

STATEMENT OF THE CASE

In March 2012, defendant drove his car through an intersection at nearly 100 miles per hour. He struck two pedestrians who were crossing the intersection at the time. Defendant fled the scene after the accident. Both pedestrians suffered critical injuries; one died two weeks after the accident, and the other died two years after the accident from complications related to her injuries.

In 2014, defendant was charged by information with two counts of murder (Pen. Code, § 187); two counts of hit-and-run with injury (Veh. Code, § 20001 subd. (a)(b)(2)), one count of hit-and-run with property damage (Veh. Code, § 20002 subd (a)), one count of resisting an officer causing death or serious bodily injury (Pen. Code, § 148.10, subd. (a)), three counts of resisting an officer (Pen. Code, § 69), and one count of assault with a deadly weapon (Pen. Code, § 245(a)(1)). With regard to the two murder charges, and the charge of assault with a deadly weapon, the information alleged that defendant personally used a deadly and dangerous weapon, a vehicle. (Pen. Code, § 12022 subd. (b)(1).)

In exchange for an agreement that one of the murder charges would be classified as second degree, and the other would be dismissed, defendant pleaded no contest to all counts and admitted the personal use enhancement. The parties stipulated that appellant was legally insane at the time of the offense.

On October 20, 2014, the court committed defendant to the Department of State Hospitals and set forth that the maximum period of confinement was 15 years to life, consecutive to 11 years, for a total of 26 years to life.

On October 20, 2014, defendant filed a notice of appeal.

DISCUSSION

Defendant asserts that his maximum period of confinement should be reduced from 26 years to 25 years, because although the hit-and-run caused injury to two people, only one charge of hit-and-run could be used to calculate the period of confinement. The Attorney General concedes, and asks that the maximum period of confinement be reduced to 25 years.

When as here, a defendant causes an accident where multiple victims are injured, and he leaves the scene, he can only be convicted of one count of hit-and-run with injury. (See *People v. Calles* (2012) 209 Cal.App.4th 1200, 1217-1218; *People v. Newton* (2007) 155 Cal.App.4th 1000, 1002.)

Both counts of hit-and-run with injury in this case were based on defendant's act of leaving the scene of the same accident. Only one count should have been charged, and only one count should have been used to compute the maximum period of confinement.

The computation of the maximum period of confinement was based in part on a four year term for one count of hit-and-run, and an additional one year for the second hit-and-run. No term should have been ordered for the second hit-and-run. Therefore, the maximum period of confinement in this case should be reduced from 26 years to 25 years.

DISPOSITION

The order of commitment is modified to reflect that defendant's maximum period of confinement is 15 years to life, consecutive to 10 years, for a total of 25 years to life.

RUSHING, P. J.

WE CONCUR:

MÁRQUEZ, J.

GROVER, J.

People v. Rathjen
H041612