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REPORTS**

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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN PABLO MELENDEZ,

Defendant and Appellant.

B284752

(Los Angeles County
Super. Ct. No. YA095808-01)

APPEAL from a judgment of the Superior Court of Los Angeles County, Scott T. Millington, Judge. Affirmed in part; remanded in part with directions.

Katja Grosch, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant Juan Pablo Melendez of methamphetamine possession for sale. (Health & Saf. Code, § 11378.) The trial court found true allegations that defendant had a prior first degree burglary conviction (Pen. Code,¹ §§ 667, subd. (d), 1170.12, subd. (b)) and had served a prior separate prison term (§ 667.5, subd. (b)). The trial court sentenced defendant to four years in state prison.

Defendant's appointed appellate counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 requesting that we independently review the entire record to determine if there are any arguable issues. On February 1, 2018, we notified defendant that appointed appellate counsel had failed to find any arguable issues and defendant had 30 days within which to independently brief any grounds for appeal, contentions, or arguments he wanted us to consider. More than 30 days elapsed and we received no communication from defendant. We have reviewed the record and are satisfied that defendant's appointed appellate counsel has fully complied with her responsibilities and no arguable issues favorable to defendant exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

As noted above, the trial court found a prior separate prison term enhancement allegation (§ 667.5, subd. (b)) to be true. Our review of the record reveals that the court neither

¹ Further statutory references are to the Penal Code unless otherwise noted.

imposed nor struck that enhancement. Defendant was facing a maximum seven-year sentence—the high term of three years for methamphetamine possession for sale, doubled because of defendant’s prior strike conviction, plus one year for the prior separate prison term. The People asked the trial court to impose a four-year sentence—the midterm of two years doubled—and to *stay* the one-year prior separate prison term enhancement. The People cited as mitigation that defendant had no parole violations since receiving parole on June 7, 2016, and requested that the court “exercise its discretion in sentencing [d]efendant to four years pursuant to Penal Code sections 667 and 1170[, subd.] (b).” The trial court imposed a four-year term.

We asked the parties to brief the question whether, having found the prior separate prison term enhancement allegation to be true, the trial court was required to either impose or strike that enhancement. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241 [“Once the prior prison term is found true . . . the trial court may not stay the one-year enhancement, which is mandatory unless stricken”].) Defendant argues that although the trial court did not explicitly strike the prior, it was following the People’s sentencing recommendation, which argued that the prior should be stricken.² Defendant therefore argues that remand would serve no purpose and would waste judicial

² As set forth above, the People’s sentencing brief requested that the prior allegation be stayed, not stricken.

resources. The Attorney General argues that remand is appropriate.

We conclude that the sentence was legally unauthorized and it is necessary to remand this matter for the trial court to exercise its discretion under section 1385, subdivision (a) to either impose or strike the enhancement. (*People v. Bradley* (1998) 64 Cal.App.4th 386, 390, 392 [“to neither strike nor impose a prior prison term enhancement is a legally unauthorized sentence” and where “minutes contain no statement of reasons as to why judicial leniency would be in the interests of justice,” court concludes no section 1385, subdivision (a) order striking the prior prison term was issued].) On remand, the trial court must either impose or strike the one-year prior separate prison term enhancement under section 667.5, subdivision (b).

DISPOSITION

This matter is remanded to the trial court to exercise its discretion under section 1385, subdivision (a) to either impose or strike the one-year prior separate prison term enhancement under section 667.5, subdivision (b). The judgment is affirmed in all other respects. If the trial court exercises its discretion to strike the enhancement, it must state its reasons for doing so orally on the record. (§ 1385, subd. (a).) If the trial court exercises its discretion to impose the enhancement, it must prepare an amended abstract of

judgment and deliver a copy to the Department of
Corrections and Rehabilitation.

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KIM, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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