

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.111.5.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRY ANTONIO LAWRENCE,

Defendant and Appellant.

2d Crim. No. B236924
(Super. Ct. No. 1363181)
(Santa Barbara County)

Terry Antonio Lawrence appeals his conviction by jury for felony vandalism (count 5; Pen. Code, §594, subd. (b)(1))¹, corporal injury on a former cohabitant with great bodily injury (count 7; §273.5, subd. (a); §12022.7, subd. (e)), and the lesser included offenses of misdemeanor assault (count 8; § 240) and battery (count 9; § 242). In a bifurcated trial, the trial court found that appellant had suffered a prior strike conviction (§§ 667, subds. (d)(1) & (e)(1); 1170.12, subd. (b)(1)) and sentenced appellant 18 years state prison with concurrent 180 day terms on the misdemeanor assault and battery counts. We reverse the convictions on the lesser offenses: misdemeanor assault and battery and direct the trial court to enter a dismissal on counts 8 and 9. (See *People v. Chan* (2005) 128 Cal.App.4th 408, 421.)

¹ All statutory references are to the Penal Code.

On August 21, 2010, appellant ended a one month relationship with his girlfriend, Carla Todd, and vandalized her car. After Todd called the police, appellant said "You need to die" and punched Todd in the face several times, knocking her out. The jury convicted appellant of willful infliction of corporal injury with great bodily injury (count 7) and the lesser included offenses of misdemeanor assault (count 8) and battery (count 9).

The Attorney General agrees that the convictions for assault and battery should be reversed because a defendant cannot be convicted of both the greater and lesser offense. (*People v. Moran* (1970) 1 Cal.3d 755, 763.) "When such a state of affairs is discovered on appeal, the correct course of action is to reverse the conviction for the included offense and direct the entry of a dismissal of the less serious crime. [Citations.]" (*People v. Chan, supra*, 128 Cal.App.4th at p. 421.)

We reverse the convictions for simple assault and battery and direct the trial court to dismiss counts 8 and 9. The judgment is affirmed in all other respects and the sentence remains the same: 18 years state prison.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Patricia Kelly, Judge
Superior Court County of Santa Barbara

Laurie A. Thrower, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M.
Roadarmel, Jr. , Supervising Deputy Attorney General, William N. Frank, Deputy
Attorney General, for Plaintiff and Respondent.