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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON NAPIER,

Defendant and Appellant.

B236603

(Los Angeles County
Super. Ct. No. YA077860)

APPEAL from a judgment of the Superior Court of Los Angeles County. Cary H. Nishimoto, Judge. Affirmed as modified.

Ava R. Stralla, 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, Assistant Attorney General, Paul M. Roadarmel, Jr. and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Brandon Napier appeals from the sentence following his convictions arising from a home invasion robbery. The Attorney General agrees that the court erred in calculating appellant's sentence. We modify the sentence and otherwise affirm.

FACTS AND PROCEEDINGS

In April 2010, appellant Brandon Napier participated with two others in the home robbery of Fred Bess and Bess's visitor, Kareena Jessie. We need not set out the details of appellant's crimes because appellant asserts on appeal only sentencing errors by the trial court. A jury convicted appellant of the home invasion robbery of Fred Bess, finding true that appellant voluntarily acted in concert within the meaning of Penal Code section 213, subdivision (a)(1)(A)¹. The jury also convicted appellant of the robbery of Kareen Jessie, but found *not true* that appellant voluntarily acted in concert within the meaning of section 213, subdivision (a)(1)(A), thus making the crime a simple robbery. The jury found a principal was armed with a handgun for both offenses (§ 12022, subd. (a)(1)), and that appellant personally used a handgun against Jessie (§ 12022.53, subd. (b).)² Appellant admitted a prior conviction allegation. The court sentenced appellant to state prison for 38 years and 4 months. This appeal followed.

DISCUSSION

A. *Sentence for Robbery of Kareena Jessie*

Appellant asserts no error in the calculation of his sentence for the Bess robbery. As to the Jessie robbery, the trial court selected that crime as the base term. The court imposed the upper term of 9 years for home invasion robbery, doubled to 18 years because it was appellant's second strike under the Three Strikes law. However, the jury

¹ All further undesignated statutes are to the Penal Code.

² The jury could not reach a verdict on one count of residential burglary by appellant of Fred Bess's home and failed to make a finding as to appellant's personal use of a handgun against Bess. Accordingly, the court declared a mistrial of those two matters and did not incorporate them into its calculation of appellant's sentence.

found not true that appellant voluntarily acted in concert with others in robbing Jessie. (§ 213, subd. (a)(1)(A).) Appellant contends the court therefore should have sentenced him for robbery on that count, not home invasion robbery. The Attorney General agrees.

Appellant asks that we remand for resentencing. But this court may correct on appeal an unauthorized sentence if the correction involves no resolution of disputed facts. (*People v. Scott* (1994) 9 Cal.4th 331, 354.) In sentencing appellant, the court identified multiple aggravating factors, and no factors in mitigation, before imposing the upper nine-year term for home invasion robbery. Appellant acknowledges, therefore, that the court's intention was to sentence him to an upper term sentence. But the court's error, which the Attorney General acknowledges, is appellant's sentence should be for robbery, the upper term of which is 6 years, doubled to 12 years as a second strike. (§ 213, subd. (a)(1)(B).) Accordingly, we shall order the trial court to amend the abstract of judgment in accord with this opinion.

B. Stay of Principal Armed Enhancement

The jury found that a principal was armed with a firearm and that appellant personally used a firearm in the robbery of Kareena Jessie. The court imposed a 1-year term for the armed principal enhancement (§ 12022, subd. (a)(1)) and a 10-year term for the personal use enhancement (§ 12022.53, subd. (b)).

Appellant contends that, based on the court's imposition of the 10-year personal use enhancement, the court should have stayed the 1-year armed principal enhancement. (*People v. Gonzalez* (2008) 43 Cal.4th 1118, 1125.) The Attorney General agrees. Appellant asks that we remand for resentencing for this error as well. As we have already observed, this court may, however, correct on appeal an unauthorized sentence if the correction involves no resolution of disputed facts. (*People v. Scott, supra*, 9 Cal.4th at p. 354.) Because the jury's findings of an armed principal and personal use enhancements are undisputed, we shall order the trial court to amend the abstract of judgment in accord with this opinion.

C. Error Not to Impose Court Security Fee

Section 1465.8, subdivision (a)(1) requires the sentencing court to impose a mandatory \$40 court security fee for each conviction. (*People v. Schoeb* (2005) 132 Cal.App.4th 861, 865; § 1465.8, subd. (a)(1) [“To assist in funding court operations, an assessment of forty dollars (\$40) shall be imposed on every conviction for a criminal offense”].) The trial court did not impose the fee for either of appellant’s convictions. We may correct on appeal a trial court’s failure to impose the fee. (*People v. Turner* (2002) 96 Cal.App.4th 1409, 1413; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1255.) Accordingly, we shall order the trial court to amend the abstract of judgment in accord with this opinion.

DISPOSITION

The trial court is ordered to amend the abstract of judgment as follows: (1) The base term under count 2 shall be the upper term of 6 years, doubled to 12 years; (2) The 1-year principal armed sentence enhancement under section 12022, subdivision (a)(1) for count 2 shall be stayed; and (3) Two \$40 court security fees shall be imposed. The trial court shall forward the corrected abstract of judgment to the Department of Corrections and Rehabilitation. As amended, the judgment is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.