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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR EVERARDO SAUCEDO,

Defendant and Appellant.

2d Crim. No. B236339
(Super. Ct. Nos. 20110207792
& 20080332463)
(Ventura County)

Victor Everardo Saucedo was sentenced in two cases to concurrent terms. In both cases the sentence included four consecutive one-year terms pursuant to Penal Code section 667.5, subdivision (b), for having served prior prison terms.¹ The prior prison terms in both cases were the same. We strike the section 667.5, subdivision (b) enhancements imposed in the second case. In all other respects we affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

FACTS

Possession of Heroin

Ventura County Case No. 2008033463 (first case)

Saucedo pled guilty to possession of heroin. (Health & Saf. Code, § 11350, subd. (a).) He admitted that he suffered a prior strike (§§ 667, subds. (c)(1) & (e)(1); 1170.12, subds. (a)(1) & (c)(1)) and seven prior prison terms (§ 667.5, subd. (b)).

The trial court struck the prior strike and three of the prior prison terms. It sentenced Saucedo to the middle term of two years for possession of heroin and four consecutive one-year terms for the prior prison terms pursuant to section 667.5, subdivision (b). It suspended imposition of sentence, and placed Saucedo on probation for 36 months.

Saucedo later admitted that he violated probation. The court revoked probation and imposed the six-year prison term.

Petty Theft With Priors

Ventura Superior Court No. 2011020792 (second case)

Saucedo pled guilty to petty theft with three or more priors. (§ 666, subd. (a).) He also admitted a prior strike (§§ 667, subds. (c)(1) & (e)(1); 1170.12, subds. (a)(1) & (c)(1)) and six prior prison terms (§ 667.5, subd. (b)).

The trial court struck the prior strike and two of the prior prison terms. It sentenced Saucedo to the middle term of two years on the charge of petty theft with three or more priors and four consecutive one-year terms for the four prior prison terms. The six-year sentence was ordered to be served concurrently with the six-year sentence imposed in Case No. 2008033463, possession of heroin.

DISCUSSION

Saucedo contends the trial court erred in imposing one-year terms for prior prison terms under section 667.5, subdivision (b) in both cases.

Prior prison term enhancements pursuant to section 667.5, subdivision (b) go to the nature of the offender and do not attach to particular

counts. (*People v. Tassell* (1984) 36 Cal.3d 77, 90, disapproved on other grounds in *People v. Ewoldt* (1994) 7 Cal.3d 380, 387.) Where the enhancements refer to the same prior prison term, duplicate enhancements should be stricken even where the sentences are imposed concurrently. (*People v. Smith* (1992) 10 Cal.App.4th 178, 182.)

Here the People concede the section 667.5, subdivision (b) enhancements imposed in the second case arose from the same prior prison terms as those imposed in the first case. Thus the section 667.5, subdivision (b) enhancements imposed in the second case must be stricken.

The enhancements imposed pursuant to section 667.5, subdivision (b) in Case No. 2011020792 are stricken. We direct the trial court to prepare an amended abstract of judgment accordingly, and to send a certified copy of such amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Nancy Ayers, Judge

Superior Court County of Ventura

Peter Chang, under appointment by the Court of Appeal, for
Defendant and Appellant.

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