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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DEAN WALSH, Defendant and Appellant.	B227016 (Los Angeles County Super. Ct. No. NA082539)

APPEAL from a judgment of the Superior Court of Los Angeles County. Tomson T. Ong, Judge. Affirmed as modified.

Karyn H. Bucur, 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, Colleen M. Tiedemann and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

SUMMARY

Defendant Dean Walsh appeals from a judgment entered after a jury convicted him of first degree residential burglary (Pen. Code, § 459). The information alleged three prior strikes based on two cases, ten prior prison terms based on six cases, and three prior convictions of a serious felony based on two cases. During the jury trial, Walsh waived his right to a jury trial on the priors. After trial, Walsh waived his right to a court trial on the priors and admitted the prior serious violent felony convictions and the prior prison terms. At the next hearing, the court sentenced Walsh to a term of 25 years to life based on his three strikes, to two additional terms of five years to be served consecutively for the two special allegations (Pen. Code, § 667, subd. (a)(1)), and four one-year enhancements to run consecutively for four prior prison terms (Pen. Code, § 667.5, subd. (b)).

It is unnecessary to recite the facts of Walsh's offense in order to resolve his contentions of appeal. On appeal, he contends that: (1) his conviction should be reversed because the trial court deprived him of a fair and impartial jury; (2) his admission of prior convictions and prison terms should be set aside because they were made without advisement of the full penal effect of the admissions; (3) his prior prison term enhancements should be stricken because his admissions did not provide sufficient proof of all required elements; and (4) his sentence should be reversed because he received ineffective assistance from trial counsel advising him to admit to prior strike convictions and stipulate to the factual basis of the prior convictions. He also contends, and the prosecution concedes, that the abstract of judgment states the incorrect Penal Code section for his prior prison term enhancements.

We find Walsh's first four contentions to be without merit. The modification of the abstract of judgment to correct the Penal Code citation is granted.

DISCUSSION

I. Admonishment of Prospective Jurors

On appeal, Walsh contends that the trial court committed structural error during void dire when it admonished prospective jurors not to "whine" about jury duty and

contrasting the "citizenship duty" of jury service against the "citizenship duty" of military service. Walsh argues that this admonishment chilled the prospective jurors' duty to truthfully answer all questions and may have prevented prospective jurors from coming forward to disclose true biases or other legitimate concerns about their ability to serve as fair and impartial jurors.

A. Proceedings Below

During voir dire of an initial venire panel, the court asked prospective jurors to identify themselves if they knew anyone on a list of potential witnesses and one prospective juror stood up. Under the court's questioning, that prospective juror stated she is married to a police officer and had socialized with the listed officer but did not talk about the officer's cases or assignments. The court thanked the prospective juror and said that "[it] doesn't get you out of jury duty" and that it was "very hard" to get out of jury duty in his courtroom. The trial court then stated:

> "This case will take three days to try. It's not the longest case in this courthouse, just the same it's important to both sides. If you are called as one of the jurors and are accepted as one of the people in the jury box or one of the alternates up front I will expect that you will serve.
>
> "It is your citizenship duty. There are many fine people who are doing citizenship duty like you are except they are in harmful places like Iraq and Afghanistan that would gladly trade three days with you in my courtroom.
>
> "I figure doing jury duty is part of being a good citizen. The one thing I don't want to hear is whining. There is no whining about jury duty in my courtroom, okay? And, trust me, I have heard every single excuse that you could probably think of in the last 12 years have [sic] been a judge. We don't want to hear any whining.
>
> "If any of you feel that that's too much of an imposition to being a United States citizen, would you stand up right now. See none of the 32 have stood up. They are all good citizens. Thank you."

The trial court repeated his admonishment later in the proceedings during the voir dire of a second panel of prospective jurors. To this panel the court stated:

> "If you're selected as one of the people in the box or one of the few alternates up front, I would ask that you be a good citizen and serve. There are many fine people who are doing your citizenship duty as you are doing theirs in my courtroom. Those people doing your citizenship duty happen to be in Afghanistan or Iraq and would gladly trade three days of R and R and do my courtroom duty. Therefore, if you are asked to serve, I will expect you will serve because you're all good citizens.
>
> "The one thing I do not accept is whining. There is no whining in my courtroom about jury duty. Any of you feel this is too much imposition of being a good citizen, please stand up right now, I'll accept your renunciation of your citizenship.
>
> "I don't see anybody standing up. I know that I have very fine citizens in my courtroom. Thank you."

B. Relevant Authority

Voir dire is critical in assuring a criminal defendant's Sixth Amendment right to a fair and impartial jury. (*Rosales-Lopez v. United States* (1981) 451 U.S. 182, 188; *In re Hitchings* (1993) 6 Cal.4th 97, 110.) The efficacy of voir dire is "dependent on prospective jurors answering truthfully when questioned" so that the examination can reveal possible biases. (*In re Hitchings*, *supra*, 6 Cal.4th at pp. 110-111.)

The trial court has discretion in the manner in which voir dire is conducted and appellate courts accord the exercise of this discretion with considerable deference and will not reverse a conviction unless the exercise has resulted in a miscarriage of justice. (*People v. Cardenas* (1997) 53 Cal.App.4th 240, 246-247.)

C. Analysis

The Attorney General argues forfeiture of Walsh's contention that the admonishment deprived him of a fair and impartial jury as the defense did not object at trial to the court's admonition of the prospective jurors. Walsh responds that this Court

has discretion to excuse a lack of a trial court objection and that the Penal Code provides that this Court may review any instruction given even though no objection was made in the trial court if the instruction affected the substantial rights of the defendant. (*People v. Abbaszadeh* (2003) 106 Cal.App.4th 642, 649 (*Abbaszadeh*); Pen. Code, § 1469.) We exercise our discretion and address the merits of Walsh's claims.

Walsh relies upon two cases, *People v. Mello* (2002) 97 Cal.App.4th 511 (*Mello*) and *Abbaszadeh*, *supra*, 106 Cal.App.4th 642, to support his claim of error. In *Mello*, the trial judge told the potential jurors during voir dire that if they harbored racial bias, but were reluctant to admit it, he gave them permission to lie and to "dream up" another reason for being excused from the jury. (*Mello*, *supra*, at p. 514.) *Mello* held that such an instruction was structural error, since it was impossible for the parties to know whether a fair and impartial jury had been seated. (*Id.* at p. 517.) The erroneous instructions advised prospective jurors both to conceal and to falsify relevant information. (*Id.* at pp. 517-518.) The court of appeal believed that such an admonishment could deprive the parties of the information necessary to make informed tactical decisions, and it infected the entire trial process with the unacceptable notion that lying under oath was acceptable. (*Id.* at p. 518.) The trial court's admonition "set the wrong tone for the jurors' compliance with all of their important obligations. [¶] By depriving defendant of the ability to ensure that [the defendant] would have a fair and impartial jury, [the trial court] also deprived [the defendant] of due process of law." (*Id.* at p. 519.) The judgment was reversed. (*Id.* at p. 520.)

In the subsequent case of *Abbaszadeh*, *supra*, 106 Cal.App.4th 642, the same trial judge as in *Mello* admonished the potential jurors in a similar fashion, but without a blatant invitation to lie. (*Id.* at pp. 646-647.) The judge asked the prospective jurors to "'*do whatever you have to do to get off the jury*'" if they harbored racist feelings. (*Id.* at p. 646.) The appellate court concluded that the trial court had directed the jurors to lie. (*Id.* at p. 647.) The trial court's error constituted a violation of the defendant's right to due process. Because the error was structural, reversal was required.

As Walsh concedes, the instant case is clearly distinguishable from *Mello* and *Abbaszadeh* because, unlike those cases, "the trial court's admonition in the present case does not instruct prospective jurors to lie." Rather, Walsh argues that the "admonition's meaning is unmistakable—if the prospective jurors voiced any reason why they are not competent to serve as jurors or if they voiced legitimate biases or prejudice against appellant during voir dire they may be subjected to an embarrassing exchange in the courtroom with the judge." We believe that in context reasonable prospective jurors hearing the challenged admonishments would have understood the trial court to be indicating that it did not want to hear complaining about the inconvenience and obligation of jury service, not that the court was indicating that jurors should not truthfully answer questions from counsel or that they should hide biases and prejudices or their views on the subjects being discussed.

Moreover, two prospective jurors did voice biases and prejudices and, far from subjecting them to an "embarrassing exchange," the court engaged in a respectful dialogue with each of these jurors before stating that it would allow the attorneys to follow up. With prospective Juror No. 20, the court had asked prospective jurors to raise their hand if any had family members arrested, charged or convicted of a crime similar to that first degree residential burglary case before the court. Under questioning by the court, Juror No. 20 stated that he/she might think about the relative's experience though he/she might not speak about it and the court noted "[t]hat's a very honest answer." Juror No. 20 stated that he/she could not promise not to factor the relative's situation into the case as it was part of the juror's life experience, finally saying that the juror could only promise to try. The court told Juror No. 20, "I appreciate your honesty."

When questioning Juror No. 22, the court asked if the juror had ever "had a bad experience with the judge or something?" and the juror responded affirmatively. The court responded, "Really. Was it me?" to which the juror replied no. When asked if the juror remembered the judge's name, the juror responded "And even when I look at you, it makes me not want to remember that, because it makes me want to be fair to you. You seem like a very good person." Juror No. 22 later offered that "I've seen some judges,

not personally in my case, but I've been a witness in the case where I know there was nothing right about that person." Juror No. 22 also stated that although he/she tries to be fair, based on his/her experiences with police officers "I don't know, I might just say that, probably they're lying." The court thanked the juror for his/her candor.

Furthermore, the trial court also showed itself willing to excuse jurors from service with legitimate concerns or hardships. Juror No. 25 in answering about his/her family composition, stated that he/she had two children and added that "[o]ne is under emergency doctor's care at the moment." The court then asked on its own volition if it would be better for the juror to serve jury duty a different time other than today and asked counsel to stipulate to excuse the juror.

The other prospective jurors would have witnessed these interactions and observed that the trial court discussed biases and concerns with Juror Nos. 20 and 22 without humiliating them and in fact thanking them for their candor and honesty, as well as the trial court offering to excuse Juror No. 25 so that he/she could serve on a different date. In this context, we conclude that the challenged admonition was not an abuse of discretion and did not violate appellant's rights to a fair and impartial jury.

II. Admission of Prior Convictions

Walsh contends that his admission of prior prison convictions and prior prison terms was not knowingly and intelligently made because he was not advised of the full penal effect of his admission. Specifically, he argues that the "record shows that appellant knew he was exposed to a maximum prison term of six years. Without knowledge that appellant was exposing himself to a prison term of more than 40 years, rather than six years, his admissions to the prior conviction and prior prison terms could not have been intelligently and voluntarily made."[1]

[1] Walsh does not dispute that he was advised of his constitutional rights prior to waiving them and making his admission.

A. Relevant Authority

A defendant who admits a prior criminal conviction must first be advised of the penal consequences of the admission. (*In re Yurko* (1974) 10 Cal.3d 857, 864.) Unlike the admonition required for a waiver of constitutional rights which is constitutionally mandated, advisement of the penal consequences of admitting a prior conviction is a judicially declared rule of criminal procedure. (*Id.* at p. 864; *People v. Walker* (1991) 54 Cal.3d 1013, 1022 (*Walker*).) Thus, any error in failing to advise a defendant of the penal consequences of a plea or admission is waived if not raised at or before sentencing. (*Id.* at p. 1023; *People v. Wrice* (1995) 38 Cal.App.4th 767, 770-771 (*Wrice*).) Additionally, in order to invalidate a plea or admission based on the failure to advise of the penal consequences, a defendant must demonstrate that it is reasonably probable he would not have entered the plea or admission had he been properly advised of the consequences. (*Walker*, *supra*, 54 Cal.3d at pp. 1022-1023; *Wrice*, *supra*, 38 Cal.App.4th at p. 771.)

B. Analysis

Here, Walsh did not object before or at sentencing that he had not been advised of the penal consequences of his admission. "'The purpose of the general doctrine of waiver is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had. . . .'" (*Walker*, *supra*, 54 Cal.3d at p. 1023; *Wrice*, *supra*, 38 Cal.App.4th at p. 771.) Had the imposition of the sentence pursuant to the Three Strike law and enhancement allegations "'come as a genuine surprise, it would have been a simple matter to bring the issue to the attention of the trial court.' [Citations.]" (*Wrice*, *supra*, 38 Cal.App.4th at p. 771.) Accordingly, Walsh has forfeited the issue on appeal.

In any event, Walsh has also failed to demonstrate a reasonable probability that he would not have made the admissions had he been properly advised of the consequences. Although the record does not show that the trial court advised Walsh of the exact penal effect of his admission, the record indicates that Walsh was aware that he faced a much longer sentence than the "maximum prison term of six years" which he claims on appeal was all he knew about and in fact argued for leniency with that awareness.

Walsh's counsel filed two *Romero*[2] motions, which were denied, in an attempt to have one or more of the strikes stricken. During a hearing on his first *Romero* motion, Walsh was present with his attorney when his counsel asked the trial court to strike all three of Walsh's three prior strikes as they were all "outdated" from 1986 and 1991 and suggested that, even after striking the three strikes, the court could still impose a substantial sentence and suggested 12 years as "a suitable punishment for him without locking him up and throwing away the key." Thus, it was clear that Walsh knew that the best case scenario for him—which assumed that all three strikes were stricken—was 12 years and if, as turned out to be the case, the trial court declined to strike any of his prior strikes, he would face a significantly longer sentence akin to "locking him up and throwing away the key." Also at the first *Romero* hearing, the prosecution noted that two of Walsh's prior convictions, in 1996 and 2004, occurred after he had three strikes yet "he was not sentenced to 25 to life, meaning that the courts in those cases gave him breaks." Thus, Walsh would have been aware based on his three strikes, the prosecution was seeking no more "breaks" and a sentence of 25 years to life for the residential burglary count.

Moreover, the information listed the "effect" of the special allegations as "+5 yrs per prior" for "PC 667(A)(1)" and "+1 yr. per prior" for "PC 667.5(B)." The information listed three "prior conviction(s) of a serious felony" "pursuant to Penal Code section 667(a)(1)." The information also listed 10 convictions from six cases where "a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term." Thus, based on the information, Walsh would have been aware that he potentially could be sentenced to three five-year enhancements and 10 one-year enhancements. Accordingly, we conclude that, even if Walsh had not forfeited the claim, there is no

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[2] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

reasonable probability that he would not have made the admissions had the court specifically advised him of the penal consequences at the time of his admissions.

III. Four Year Sentencing Enhancement

Walsh contends that his admissions did not provide sufficient proof of all elements for the four one-year enhancements he received under Penal Code section 667.5, subdivision (b).

A. Proceedings Below

In a colloquy with the court, Walsh waived his right to a trial on his prior convictions and prison priors, and admitted that he suffered prior convictions of serious violent felonies under Penal Code section 1170.12, subdivision (a) through (d), and section 667, subdivision (b) through (i). Walsh then proceeded to admit to prison priors:

"THE COURT: As to the prison priors under Penal Code section 667.5(d) [sic], it is alleged that you suffered the following prior conviction and that you suffered a prior 667.5 and did not remain free of prison custody for—and did commit an offense resulting in a felony conviction during of period of five years subsequent to the conviction of said term: A 031621, charge of Penal Code section 487.1, conviction date of March 6, 1986; case A 469568, residential burglary, Penal Code section 459, conviction date of August 8, 1986; case A 040273, for Vehicle Code section 20001, conviction date August 12, 1988; case NA 007558 for Penal Code section 211, and Penal Code section 459, residential burglary, and Vehicle Code section 10851(a), conviction date of July 3, 1991; in case BA 035656, for Penal Code section 666 and Penal Code section 487(a), conviction date September 9, 1996; in case 04 WF 0583 for Penal Code section 459, and Penal Code section 487(a), with a conviction date of March 16, 2004, all in L.A. Superior Court. Do you admit to those prison priors, sir?

"THE DEFENDANT: Yes."

After Walsh's counsel concurred and joined in the waivers and admissions and stipulated to the factual basis based upon a review of the "969(b)" packet and the court certified packet that was provided, the court found the admission to be knowing, intelligent, voluntary, express and explicit.

B. Relevant Authority

Preliminarily, we note that the Supreme Court in *People v. Maultsby* (2012) 53 Cal.4th 296 concluded that a certificate of probable cause is not required to challenge an admission to an enhancement. Accordingly, we address the merits of Walsh's next two contentions.

We review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports a true finding on the enhancement allegation, so that a reasonable trier of fact could find the allegation true beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138.)

Penal Code section 667.5, subdivision (b) provides as follows: "Except where subdivision (a) [pertaining to a 'violent' new offense] applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefore, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction." Due process requires proof of each of these elements in order to impose the enhancement; thus, the prosecution must show that the defendant: "(1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. [Citation.]" (*People v. Tenner* (1993) 6 Cal.4th 559, 563, 566 (*Tenner*).)

C. Analysis

Here, Walsh argues that "the colloquy between the court and appellant for the admission of each prior prison term refers only the fact of a prior conviction and not to the remaining three elements required to prove a prison prior." During the colloquy, however, the court also stated that it was "[a]s to prison priors under Penal Code section 667.5" and that "it is alleged . . . that you suffered a prior 667.5 and did not remain free

of prison custody for – and did commit an offense resulting in a felony conviction during a period of five years subsequent." Moreover, the court asked Walsh, "Do you admit to those prison priors, sir?" These statements during the hearing support an inference that defendant admitted all the elements of the enhancement allegation—that he was previously convicted, was imprisoned, and completed a term of imprisonment, and did not remain free for five years of both prison custody and commission of a new offense resulting in felony conviction. (See *Tenner*, *supra*, 6 Cal.4th at p. 563.)

Moreover, Walsh's prison prior packet was admitted as court's Exhibit A and the certified copies it contains provide an additional basis a reasonable trier of fact could find the enhancement allegation true beyond a reasonable doubt. Exhibit A shows that Walsh was imprisoned, completed a term of imprisonment, and did not remain free for five years of both prison custody and commission of a new offense resulting in a felony conviction as to the four convictions that served as the basis for prison prior enhancements.

Accordingly, we conclude that the trial court properly imposed four one-year enhancements on Walsh under Penal Code section 667.5, subdivision (b).

IV. Ineffective Assistance of Trial Counsel

Walsh contends that his trial counsel was ineffective for allowing him to admit to his prior strike convictions and stipulating to the factual basis of the prior convictions on a record impossible for the prosecution to prove. Specifically, Walsh contends that the "prosecution could not have proved the truth of the prior convictions alleged in case No. NA07558 beyond a reasonable doubt with the documents offered in Exhibit 'A'" because the abstract of judgment from that case is illegible.

Walsh also contends that counsel was ineffective for concurring in his admission and stipulation to the factual basis in case No. A69568 because only the abstract of judgment was submitted and the prosecution did not also provide the complaint, transcript of the plea, or plea agreement to show the fact supporting the plea in that case.

A. Relevant Authority

"The burden of proving ineffective assistance of counsel is on the defendant." (*People v. Babbitt* (1988) 45 Cal.3d 660, 707.) A criminal defendant must show both deficient performance—"that trial counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates," and prejudice—"that it is reasonably probable a more favorable determination would have resulted in the absence of counsel's failings." (*People v. Price* (1991) 1 Cal.4th 324, 386; see *Strickland v. Washington* (1984) 466 U.S. 668, 687.)

To render reasonably competent assistance, a criminal defense attorney has a "'duty to investigate carefully all defenses of fact and of law that may be available to the defendant,'" to confer with his client to elicit matters of defense, and to advise the defendant of his rights and take action to preserve them. (*People v. Pope* (1979) 23 Cal.3d 412, 424-425, fn. 14.) "If counsel's failure to perform these obligations results in the withdrawal of a crucial or potentially meritorious defense, '"the defendant has not had the assistance to which he is entitled."'" (*Id.* at p. 425, fn. omitted.)

B. Analysis

In the situation before us, a reasonably competent attorney would be informed of the types of prior convictions that qualify as strikes and advise his or her client of the applicable law in any discussion of an admission. (See *People v. McCary* (1985) 166 Cal.App.3d 1, 7-9.) Walsh points to no place in the record, however, which indicates that trial counsel was not reasonably informed of the facts or law before advising him to admit the priors. (See *People v. Vargas* (2001) 91 Cal.App.4th 506, 537 [the defendant bears the burden of showing the court that trial counsel's decision to advise defendant to admit the priors was not informed].)

Walsh's contention concerning the strikes in case No. NA007558 is based on the abstract of judgment from that case being illegible. Under Penal Code section 969b, the prosecution may satisfy its burden of proving a prior conviction by introducing a certified copy of a prison record. (*People v. Matthews* (1991) 229 Cal.App.3d 930, 937.) Here, the abstract of judgment is combined with two additional prison records: a two-page

offender commitment data entry"[3] and a 1-page fingerprint card. The offender commitment data entry lists as count 1 "P212.5(B)" and as count 2"P459." Likewise the fingerprint card lists count 1 as "ROBB 2ND (212.5(B))" and count 2 as "BURG 1ST (459 CC/W/CT1 PPR/V (667(A)PC)." "The trial court could reasonably infer that the prison employee who created the fingerprint card correctly transcribed the offense and enhancement allegation from the court records." (*People v. Ruiz* (1999) 69 Cal.App.4th 1085, 1091.) Thus, the combination of prison records is sufficient to make a prima facie showing that Walsh was convicted of robbery in the second degree and burglary in the first degree and Walsh's counsel's performance was not defective for advising him to admit to these two strikes as any challenge to the proof would likely have been futile.[4]

We also find no deficiency in counsel's advisement that Walsh admit to the first degree robbery conviction in case No. A469568. The prosecution may satisfy its burden of proving a prior conviction by introducing a certified copy of a prison record (see *Matthews, supra,* 229 Cal.App.3d at p. 937; *Ruiz, supra,* 69 Cal.App.4th at p. 1090, fn. 2), and as Walsh concedes the provided abstract of judgment in that case refers to "BURGLARY, 1st DEGREE."

Accordingly, Walsh has failed to demonstrate that trial counsel was ineffective.

V. Correction of Abstract of Judgment

Walsh contends, and the Attorney General aptly concedes, that the abstract of judgment incorrectly cites to Penal Code section 667.6., subdivision (b), pertaining to

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[3] The official custodian of the Department of Corrections noted in a cover letter that the abstract of judgment was illegible and stated "therefore providing a commitment data printout."

[4] To the extent Walsh is challenging the sufficiency of the "offender data commitment entry" sheets because one page has only Walsh's "CDC Number" and not his name, we reject the argument as meritless. Likewise, we reject the contention that the prison record does not support a finding that Walsh suffered a prior conviction for Penal Code section 211 (robbery) as alleged in the information because the prison record shows a violation of section 215.5, subd. (b) (robbery in the second degree).

10-year enhancement for prior prison terms for sex offenses, instead of correctly citing to Penal Code section 667.5, subdivision (b), pertaining to one-year enhancement for prior prison terms generally. Accordingly, we direct the trial court to modify the abstract of judgment to correct the Penal Code citation.

Although not raised by the parties, we also note that the abstract of judgment indicates that Walsh's conviction in the instant matter was pursuant to a plea, rather than correctly noting that it was pursuant to a jury verdict. Accordingly, we also direct the trial court to correct this clerical error.

DISPOSITION

The trial court is directed to correct the abstract of judgment to reflect that Walsh received a four-year enhancement pursuant to Penal Code section 667.5, subdivision (b) (and *not* Penal Code section 667.6, subdivision (b)) and that Walsh was convicted by jury (and *not* by plea). The court is directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitations. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, Acting P. J.

JOHNSON, J.