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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ALEXANDER  
RIVERA,

Defendant and Appellant.

B270567

(Los Angeles County  
Super. Ct. No. GA089208)

APPEAL from a judgment of the Superior Court of Los Angeles County, Donald G. Umhofer, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed in part and reversed in part with directions.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior

Assistant Attorney General, Scott A. Taryle and Nicholas J. Webster, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

On March 13, 2013, defendant Michael Alexander Rivera took a laptop computer from a dance studio in Alhambra. When the owner of the computer followed him outside and confronted him, Rivera punched him in the face, knocked him to the ground, and kicked him. Rivera then fled, but the police located him, recovered the computer, and placed him under arrest.

Rivera was charged by amended information with second degree robbery (Pen. Code, § 211).<sup>1</sup> It was further alleged that in case number GA071240, Rivera suffered three prior serious felony convictions for purposes of section 667, subdivision (a)(1), three serious or violent felony convictions for purposes of the three strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and one prior conviction for which he served a prison term (§ 667.5, subd. (b)).

A jury convicted Rivera of second degree robbery. He waived a jury trial on the prior conviction allegations, and the trial court found them to be true. But the court granted Rivera's motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 to strike the prior convictions for purposes of the three strikes law (§§ 667, subd. (d), 1170.12, subd. (b)).

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<sup>1</sup> All further statutory references are to the Penal Code.

The trial court sentenced Rivera to the middle term of three years for the robbery conviction. It imposed three five-year enhancements for the three prior serious felony convictions under section 667, subdivision (a)(1), and it stayed the enhancement under section 667.5, subdivision (b), for a total term of 18 years.

On appeal, defendant contends the trial court erred in imposing three enhancements under section 667, subdivision (a)(1). The People concede the error, and we agree.

## DISCUSSION

Section 667, subdivision (a)(1), provides in pertinent part that “any person convicted of a serious felony who previously has been convicted of a serious felony in this state . . . shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges *brought and tried separately*.” (Italics added.)

The “brought and tried separately” provision requires “that the underlying proceedings must have been formally distinct, from filing to adjudication of guilt.” (*In re Harris* (1989) 49 Cal.3d 131, 136; accord, *People v. Jones* (2015) 236 Cal.App.4th 1411, 1415.) Here, the abstract of judgment for the prior convictions shows a single case number, with all three convictions occurring on the same day. The People concede that because the three priors were charged together under the same case number and adjudicated in the same proceeding, the charges were not brought and tried separately. Therefore, the trial court erred in imposing three enhancements under section 667, subdivision (a)(1). Only one could be imposed. (*Harris*, at p. 137.)

Rivera asks us to direct the trial court to dismiss two of the three prior conviction allegations under section 667, subdivision (a)(1), and prepare a new abstract of judgment reflecting only one five-year enhancement. The People correctly respond, however, that “[t]he proper remedy is not merely to strike two of the five-year enhancements, but to remand to the trial court so that it can reconsider its other sentencing choices.” The record reflects that the court’s decision to strike the prior convictions for purposes of the three strikes law was based, in part, on the court’s erroneous assumption that Rivera would still “be significantly punished by the addition of 15 years of enhancement to the base term.” Accordingly, we vacate the sentence and remand for resentencing. (See *People v. Rojas* (1988) 206 Cal.App.3d 795, 802.)

### DISPOSITION

The judgment of conviction is affirmed. The sentence is vacated, and the case is remanded for resentencing.

MENETREZ, J.\*

We concur:

PERLUSS, P. J.

SEGAL, J.

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