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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BERNARD WILLIAMS,

Defendant and Appellant.

B283937

(Los Angeles County
Super. Ct. No. BA442258)

APPEAL from a judgment of the Superior Court of Los Angeles County, Katherine Mader, Judge. Modified and, as modified, affirmed.

Christopher Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Shawn McGahey Webb, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Bernard Williams raises a discrete issue regarding consecutive sentencing that does not implicate the facts underlying his crime. Instead, the relevant facts are that in another case (case No. NA091969) a jury found Williams guilty of second degree murder on June 27, 2016, and the court sentenced him to 55 years to life plus 5 years. Turning to the case before us, a jury, on September 21, 2016, found Williams guilty of criminal threats (Pen. Code, § 422, subd. (a)).¹ On July 5, 2017, the trial court sentenced him to three years, doubled to six years based on a prior strike allegation the court had found true, plus five years, purportedly under section 667.5, subdivision (b)). The court ordered the 11-year sentence to be “consecutive to any other time.”²

Williams now contends that the trial court’s order running the sentence consecutively runs afoul of section 669, subdivision (a). That section provides: “When a person is convicted of two or more crimes, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any of them to which he or she is sentenced shall run concurrently or consecutively. . . . Whenever a person is committed to prison on a life sentence which is ordered to run consecutive to any

¹ All further undesignated statutory references are to the Penal Code.

² The minute order and abstract of judgment state: “The sentence imposed in this case is ordered to run consecutive with any other sentence.”

determinate term of imprisonment, the determinate term of imprisonment shall be served first” In short, when a defendant is sentenced to determinate and indeterminate terms, the determinate term is served first. (*People v. Grumble* (1981) 116 Cal.App.3d 678, 684–685.)

Williams thus argues that his sentence is unauthorized because the trial court ordered his 11-year determinate term to be served *after* the indeterminate term, contrary to section 669, subdivision (a). This argument fails. Williams superimposes a meaning onto the trial court’s words that is not there. The court merely ordered the 11-year sentence to run consecutively, as opposed to concurrently. The court neither set the order of the sentences nor did section 669 require it to do so. No error thus occurred by virtue of the court’s statement running the sentence consecutively, and Williams appears to so concede in his reply brief.

Also in his reply brief, Williams asserts that the trial court failed to identify the proceedings in which the indeterminate sentence was imposed, as required by California Rules of Court, rule 4.451(a). But the court *did* identify those proceedings as Williams’s prior murder conviction for which he received 25 years to life plus enhancements, albeit not by case number. However, the abstract of judgment does not reference that proceeding, and therefore we will direct it to be modified accordingly.

Also, a clerical error is apparent on the face of the judgment. The court imposed the five-year prior under section 667.5, subdivision (b), but it should have been imposed under section 667, subdivision (a)(1). Although neither party raises the issue, we order this clerical error corrected to avoid potential

confusion in the future. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Bradley* (2012) 208 Cal.App.4th 64, 90.)

DISPOSITION

We direct the clerk of the superior court to prepare a modified abstract of judgment indicating that the court imposed the five-year prior under section 667, subdivision (a)(1), and identifying the proceeding (case No. NA091969) in which the indeterminate sentence was imposed. The clerk shall forward the modified abstract of judgment to the Department of Corrections and Rehabilitation. We affirm the judgment as modified.

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DHANIDINA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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