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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.

KEITH EDWARD HOUSTON,

Defendant and Appellant.

B276276

(Los Angeles County  
Super. Ct. No. YA089392)

APPEAL from a judgment of the Superior Court of Los Angeles County, Steven R. Van Sicklen, Judge. Modified and, as modified, affirmed.

Michele A. Douglass, 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, Paul M. Roadarmel, Jr., and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury found defendant and appellant Keith Edward Houston guilty of assault with a firearm with true findings on firearm and gang enhancements. The sole issue Houston raises on appeal concerns errors in his sentence. We modify the judgment to correct sentencing errors and affirm as modified.

### **BACKGROUND**

The facts underlying Houston's crime being irrelevant to the limited sentencing issue before us, we do not state them. What is relevant is that on May 24, 2016, a jury found Houston guilty of assault with a firearm (Pen. Code, § 245, subd. (a)(2))<sup>1</sup> and found true gang (§ 186.22, subd. (b)(1)(C)) and personal use of a firearm (§ 12022.5) enhancements.

A court trial on priors was thereafter held on July 8, 2016. The court found that Houston had three prior convictions within the meaning of the Three Strikes law and two prior convictions (Case Nos. YA010624 and TA032200) within the meaning of sections 667.5, subdivision (b) and 667, subdivision (a)(1). After denying Houston's *Romero*<sup>2</sup> motion, the court sentenced Houston as follows: the high term of four years; a consecutive 10 years for use of a firearm (§ 12022.5, subd. (a)); a consecutive 10 years for the gang enhancement, stayed (§ 186.22, subd. (b)(1)(C)); two 5-year terms, consecutive (§ 667, subd. (a)(1)); two 1-year terms, stayed (§ 667.5, subd. (b)); *and* 25 years to life under the Three Strikes law.

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

<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

## DISCUSSION

Houston contends and the People concede that there are errors in his sentence. We agree.

First, the court imposed two terms (four years *and* 25 years to life) on the sole count for assault with a firearm. Houston, however, was a third striker, and therefore the sentence on count 1 is 25 years to life, because the Three Strikes law is an alternative sentencing scheme. (See generally *Romero, supra*, 13 Cal.4th at p. 527.) To the extent the court imposed a four-year term on count 1 as well, it is stricken.<sup>3</sup>

Second, the trial court imposed a 10-year term for the gang enhancement.<sup>4</sup> However, section 186.22, subdivision (b)(5) provides that a 15-year minimum parole eligibility period shall be imposed if a defendant is convicted of a felony punishable by imprisonment in state prison for life. A third strike sentence is a life sentence within the meaning of that section. (*People v. Williams* (2014) 227 Cal.App.4th 733, 736-737.) Therefore, defendant is subject to the 15-year minimum parole eligibility period, not a 10-year term.

Third, the trial court found that Houston suffered two prior convictions within the meaning of section 667, subdivision (a)(1) (the five-year prior) and section 667.5, subdivision (b) (the one-year prior). The court imposed two 5-year terms (§ 667, subd.

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<sup>3</sup> The abstract of judgment correctly does not reflect a four-year term, but the minute order and reporter's transcript state that such a term was imposed.

<sup>4</sup> The court said that the enhancement was "consecutive" and "stayed," but the minute order and abstract of judgment indicate that the enhancement was not stayed.

(a)(1)) and imposed but stayed two 1-year terms (§ 667.5, subd. (b)). We conclude that, notwithstanding some authority which could support striking the one-year terms (*People v. Jones* (1993) 5 Cal.4th 1142, 1153; *People v. Solis* (2001) 90 Cal.App.4th 1002, 1021), the better practice is to impose and stay them (*People v. Brewer* (2014) 225 Cal.App.4th 98, 104, 106; *People v. Walker* (2006) 139 Cal.App.4th 782, 794, fn. 9; *People v. Lopez* (2004) 119 Cal.App.4th 355, 364), which is what the court below did.

### **DISPOSITION**

The judgment is modified to reflect that defendant was sentenced, on count 1, to 25 years to life. Any four-year term on count 1 is stricken. The 10-year term imposed under section 186.22, subdivision (b)(1)(C) is stricken and, instead, a 15-year minimum parole eligibility period is imposed, under section 186.22, subdivision (b)(5). The clerk of the superior court is directed to prepare a modified abstract of judgment and to

forward the modified abstract to the Department of Corrections and Rehabilitation. The judgment is affirmed as modified.

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BACHNER, J.\*

We concur:

EDMON, P. J.

LAVIN, 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.