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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.

SKILER ELI GASCON,

Defendant and Appellant.

B285172

(Los Angeles County
Super. Ct. No. YA069887)

APPEAL from an order of the Superior Court of
Los Angeles County, Eric C. Taylor, Judge. Affirmed.

Correen Ferrentino, 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 David A.
Wildman, Deputy Attorneys General, for Plaintiff and
Respondent.

Because Skiler Eli Gascon (Gascon) raises only a discrete sentencing issue on appeal, the facts underlying his crimes are not relevant.¹ The relevant facts are that in January 2008, an information alleged against Gascon four counts of robbery (Pen. Code, § 211)² and personal use of a firearm (§ 12022.53, subd. (b)) as to all counts. On September 15, 2008, the trial court sentenced him to the midterm of three years on count 1 plus 10 years for the weapon enhancement. As to counts 2, 3, and 4, the court sentenced him to one year (one-third the midterm of three years) plus three years four months (one-third of 10 years) on the weapon enhancements on each of those counts consecutively. Although the total sentence therefore was 26 years (3 + 10 + 13), the court misstated that the “[t]otal is 23 years.” The abstract of judgment also showed the total sentence to be 23 years, and it indicated the court had imposed two years four months on the weapon enhancements as to counts 2, 3, and 4.

In May 2017, the California Department of Corrections and Rehabilitation advised the trial court of the error—that the abstract of judgment reflected the imposition of *two* years four months on each of counts 2, 3, and 4 instead of *three* years four months, for a total sentence of 23 years instead of 26 years. On June 27, 2017, the court corrected the abstract of judgment to reflect it had imposed three years four months on each those counts and, therefore, Gascon’s total sentence is 26 years.

¹ At the Attorney General’s request, we take judicial notice of our prior opinion affirming Gascon’s conviction, *People v. Gascon* (Nov. 24, 2009, B211240) [nonpub. opn.].

² All further statutory references are to the Penal Code.

Gascon appealed again. He contends that remand for resentencing is required because the sentence imposed in 2008 was illegal, and because it was illegal, the court had the discretion in 2017 to resentence him concurrently on one of the weapon enhancements to reach a sentence of 23 years, which Gascon speculates was the court's original intent.³

However, the sentence imposed in 2008 was not illegal. The record is clear that the trial court always intended to, and did, sentence Gascon to 26 years. At the 2008 sentencing hearing, the trial court correctly pronounced sentence on the individual counts, but it added the total sentence incorrectly. That this was simply a miscalculation is evident, because two years four months is not one-third of 10 years. That is why, at the June 27, 2017 hearing, the court properly referred to the 23 years as a "simple error" and a "clerical thing" and said the only thing to do was to correct the error. Thus, a mere clerical error in the abstract of judgment, and not an illegal sentence, is at issue, and a clerical error may be corrected at any time. (*People v. Jones* (2012) 54 Cal.4th 1, 89.) "It is well settled that '[a]n abstract of judgment is not the judgment of conviction; it does not control if different from the trial court's oral judgment and may not add to or modify the judgment it purports to digest or summarize.'" (*Ibid.*) Because the trial court had the authority

³ Gascon does not specify how he gets to the number 23, and, by our calculations, 23 years is a mathematical impossibility. We acknowledge, however, that the prior opinion incorrectly states that Gascon's total term is 23 years based on a sentence of three years four months for counts 2, 3, and 4 instead of four years four months for each of those counts.

to correct the clerical error at any time, remand for resentencing would be improper.

For this same reason, we reject Gascon's related ineffective assistance of counsel claims. (See generally *Strickland v. Washington* (1984) 466 U.S. 668, 687, 694; *People v. Brown* (2014) 59 Cal.4th 86, 109.) There was only a clerical error and, moreover, no prejudice, because there was no likelihood the trial court would have imposed at the June 27, 2017 hearing a concurrent term as to one of the weapon enhancements.

DISPOSITION

The order is affirmed.

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DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.