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REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS EDWARDS,

Defendant and Appellant.

B269463

(Los Angeles County  
Super. Ct. No. VA136658)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Reversed in part, affirmed in part, and remanded.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted defendant, Louis Edwards, of injuring a cohabitant, a felony, and resisting a peace officer, a misdemeanor. (Pen. Code,<sup>1</sup> §§ 273.5, subd. (a), 148, subd. (a)(1).) The trial court sentenced defendant to five years in state prison consisting of four years for the felony, one year concurrent for the misdemeanor, and one year for a prior prison term enhancement (§ 667.5, subd. (b)). We strike the enhancement and affirm the judgment in all other respects.

## **DISCUSSION**

Defendant correctly argues he admitted only the fact of the prior conviction and not all the elements of the prior prison term enhancement. Imposition of a prior prison term enhancement requires proof 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

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

both prison custody and commission of a new offense resulting in a felony conviction. [Citation.]” (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) The prosecution has the burden of proving each element of the prior prison term enhancement beyond a reasonable doubt. (*People v. Delgado* (2008) 43 Cal.4th 1059, 1065; *People v. Tenner, supra*, 6 Cal.4th at p. 566.) On appeal, we consider defendant’s admission in light of the totality of the circumstances. (*People v. Carrasco* (2012) 209 Cal.App.4th 715, 725, abrogated on another point as noted in *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1518; see *People v. Mosby* (2004) 33 Cal.4th 353, 364-365.)

Under the totality of the circumstances, defendant’s admission was insufficient. The amended information alleged a prior robbery conviction and “that a term was served as described in . . . 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.” When taking defendant’s admission, the prosecutor only advised defendant that the prior conviction allegation subjected him to sentencing under the “Three Strikes” law.<sup>2</sup>

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<sup>2</sup> The prosecutor stated: “[I]t is alleged as to count one that you have suffered a prior conviction in case number A990008 for the charge of . . . section 211, conviction date of November 20[], 1989, in the County of Los Angeles in Superior Court of California. [¶] Pursuant to . . . section 667.d and . . . section

Neither the prosecutor nor the trial court referred to the prior prison term allegations in the amended information. Neither the prosecutor nor the trial court made any mention whatsoever of the one-year enhancement for a prior prison term or the applicability of section 667.5, subdivision (b). Defendant admitted only the fact of the prior conviction and that it qualified as a “strike” under the Three Strikes law. He did not admit he had completed a prison term for that conviction. He did not admit he had not remained free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. No evidence was ever offered in support of those allegations and no factual finding was ever made with respect to their existence.

Under the totality of the circumstances defendant did not admit all the elements of the prior prison term enhancement. Therefore, the enhancement must be stricken. On remand, the prosecution may retry the enhancement allegation. (*Monge v. California* (1998) 524 U.S. 721, 734; *People v. Barragan* (2004) 32 Cal.4th 236, 239; *People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1421.)

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1170.12, subsection b, the allegation is that because you suffered this prior, you are subject to sentencing pursuant to provisions of . . . section 667, subsection b, dash, subsection j, and . . . section 1170.12. [¶] Do you admit that you suffered this prior on the case A990008?” Defendant answered: “Yes.” The trial court ultimately dismissed this “strike” conviction.

## DISPOSITION

The finding of a prior conviction enhancement under Penal Code section 667.5, subdivision (b) is reversed. The case is remanded to the trial court for further proceedings. On remand, the district attorney is to be provided an opportunity to retry the enhancement. The judgment is affirmed in all other respects.

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KUMAR, J.\*

We concur:

KRIEGLER, Acting P.J.

BAKER, 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.