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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL BRYON CROOK,

Defendant and Appellant.

B280491

(Los Angeles County
Super. Ct. No. BA412380)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard Kemalyan, Judge. Affirmed as modified.

Randy S. Kravis, 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, Senior Assistant Attorney General, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Michael Crook of first degree murder and found true firearm and gang enhancements. In a previous appeal, we vacated the sentence and remanded for a retrial of prior conviction allegations because the record did not establish there was a voluntary and intelligent admission of the prior conviction. On remand, Crook admitted the prior conviction allegations and the trial court again imposed a sentence. In the instant appeal, Crook argues the trial court erred in imposing a consecutive determinate term pursuant to Penal Code section 186.22, subdivision (b)(1)(C), since Crook was also sentenced to a 25-years-to-life term for first degree murder.¹ The People concede this was error. We agree and modify the sentence.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of the underlying crime were set forth in detail in this court's prior nonpublished opinion, *People v. Crook* (Aug. 5, 2016, B265205). We need not restate those facts here. In brief, a jury convicted Crook of the first degree murder of Samuel Burge. The jury also found true firearm and gang enhancements (§ 12022.53, subd. (d); § 186.22, subd. (b)(1)(C)).

The People alleged Crook had suffered a prior strike and serious felony conviction, a 2003 conviction for burglary (§§ 667, subds. (b)-(j), 1170.12; 667, subd. (a)). The trial court proceeded at sentencing as though Crook had admitted the prior conviction. On appeal, Crook argued he had not personally admitted the prior conviction allegations and that any admission was not knowing and intelligent because the trial court failed to first advise him of his constitutional rights. We concluded reversal was necessary because the record did not indicate a voluntary

¹ All further statutory references are to the Penal Code.

and intelligent admission of the prior conviction in light of the totality of the circumstances. We vacated the sentence and remanded for retrial of the prior conviction allegations and resentencing.

On remand, after the trial court advised Crook of his constitutional rights, he waived his right to a trial on the prior conviction allegations and admitted the 2003 prior conviction. The trial court imposed a total prison term of 80 years to life, composed of 25 years to life on the first degree murder count, doubled pursuant to the Three Strikes law; a consecutive 25-years-to-life sentence due to the firearm enhancement (§ 12022.53, subd. (d)); and an additional five consecutive years pursuant to section 667, subdivision (a). The trial court further imposed but stayed an additional consecutive two-year term under section 186.22, subdivision (b)(1)(C). This appeal followed.

DISCUSSION

The Determinate Term Imposed Pursuant to Section 186.22, subdivision (b)(1)(C) Must Be Stricken

Crook argues, and the People concede, that the trial court erred in imposing and staying a two-year term under section 186.22, subdivision (b)(1)(C). The parties agree the trial court should have instead imposed a 15-year minimum eligible parole date pursuant to section 186.22, subdivision (b)(5). We agree.

As explained in *People v. Lopez* (2005) 34 Cal.4th 1002, 1007, when a defendant is sentenced on a first degree murder conviction, punishable by a term of 25 years to life, section 186.22, subdivision (b)(1)(C) does not apply. Instead, section 186.22, subdivision (b)(5) governs and requires a 15-year minimum parole eligibility term. Thus, we strike the enhancement imposed under section 186.22, subdivision (b)(1)(C).

Since Crook was convicted of first degree murder and sentenced to 80 years to life, the 15-year minimum parole eligibility date likely will have no effect on his sentence.²

DISPOSITION

The judgment is modified to strike the reference to Penal Code section 186.22, subdivision (b)(1)(C) and to reflect that, based on the gang enhancement, Crook is subject to a 15-year minimum eligible parole date under section 186.22, subdivision (b)(5). The clerk of the superior court is directed to correct the abstract of judgment to reflect this modification and forward the corrected abstract to the Department of Corrections. As modified, the judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.

² The minute order entered in this case indicated the trial court imposed and stayed a 10-year consecutive sentence pursuant to section 186.22, subdivision (b)(1)(C). The abstract of judgment indicated the trial court imposed a section 186.22, subdivision (b)(1)(C) enhancement, but did not include any time to be served. Both of these are inconsistent with the court's oral pronouncement described above. Further, neither reflected the proper disposition, which was the imposition of a 15-year minimum parole eligibility date pursuant to section 186.22, subdivision (b)(5).