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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ALAN REDWINE,

Defendant and Appellant.

B238954

(Los Angeles County  
Super. Ct. No. NA087693)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Joan Comparet-Cassani, Judge. Affirmed as modified, with directions.

Edward H. Schulman, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Lance E. Winters, Assistant Attorney General, James William  
Bilderback II and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and  
Respondent.

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## **INTRODUCTION**

David Alan Redwine appeals from a judgment of conviction for oral copulation of an unconscious person, in violation of Penal Code section 288a, subdivision (f).<sup>1</sup> He contends the trial court erred in imposing six five-year enhancements pursuant to section 667, subdivision (a)(1), because the offense for which he was convicted is not listed in section 1192.7, subdivision (c). The People concede the error. Accordingly, we will modify the judgment to strike the enhancements.

## **STATEMENT OF THE CASE**

A jury convicted appellant of one count of oral copulation of an unconscious person. In a bifurcated hearing, appellant admitted he had suffered six prior “strike” convictions (§§ 1170.12, subds. (a)-(d)/667, subds. (b)-(i)), which also constituted serious felony convictions under section 667, subdivision (a)(1), and had served two separate prior prison terms within the meaning of section 667.5, subdivision (b). The trial court sentenced appellant to state prison for 57 years to life as follows: 25 years to life on the charged count under the “Three Strikes Law”; six consecutive five-year terms for each of the prior serious felony convictions pursuant to section 667, subdivision (a); and two consecutive one-year terms for the section 667.5, subdivision (b) enhancements. Appellant filed a timely appeal.

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<sup>1</sup> All further statutory citations are to the Penal Code, unless otherwise indicated.

## **DISCUSSION**

Section 667, subdivision (a)(1) provides in pertinent part that, “any person convicted of a serious felony who previously has been convicted of a serious felony in this state . . . shall receive . . . a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.” “The statute applies only if the current conviction itself is also a serious felony.” (*People v. Taylor* (2004) 118 Cal.App.4th 11, 22.) Section 1192.7 defines what constitutes a serious felony for the purposes of section 667, subdivision (a). Section 1192.7 lists some felonies as per se serious felonies, and defines other crimes as serious felonies on the basis of conduct, such as a felony that results in great bodily injury. (*Id.* at pp. 22-23.) The People concede that appellant’s current conviction is not a serious felony under section 1192.7. The People request this court strike the six five-year terms under section 667, subdivision (a). Accordingly, we will remand with instructions to strike the six section 667 enhancements and the prison terms imposed thereunder.

## **DISPOSITION**

The six five-year terms imposed pursuant to section 667, subdivision (a) are stricken. As modified, the judgment is affirmed. The clerk of the superior court is

directed to prepare and forward a corrected abstract of judgment to the Department of Corrections and Rehabilitation.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.