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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.

IVY BEVERLY,

Defendant and Appellant.

B244011

(Los Angeles County
Super. Ct. No. BA305081)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Craig J. Mitchell, Jr., Judge. Affirmed and remanded in part.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Ivy Beverly appeals from a judgment that sentences her to four years in state prison on a probation violation. We remand for the limited purpose of correcting an unauthorized sentence. The judgment is otherwise affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

In 2006, Beverly lived in a motel with her boyfriend, her 15-year old daughter and her infant daughter. Beverly left the infant on a bed in the motel room to take her older daughter to school after asking her boyfriend to watch the infant. The baby died after she was found wedged between the bed and a filing cabinet. On January 3, 2007, Beverly pled no contest to one count of child abuse in violation of Penal Code section 273a, subdivision (a) and admitted to willfully causing a child to suffer unjustifiable pain and injury that resulted in death pursuant to Penal Code section 12022.95. The trial court imposed and suspended a five year sentence on the child abuse count. Beverly was placed on probation subject to various terms and conditions, including that she serve 365 days in county jail. The court failed to impose or strike the four year sentencing enhancement under Penal Code section 12022.95.

On June 30, 2008, Beverly's probation was revoked for failure to enroll in mandatory classes. Beverly admitted to the probation violation and her probation was reinstated with the modification that she serve an additional 180 days in county jail. Beverly's probation was again revoked on September 2, 2011 when she was charged with fraudulent use of an access card in violation of Penal Code section 484e. She admitted to the probation violation and the new charge was dismissed. The trial court sentenced her to serve the midterm of four years in state prison and ordered to pay various fines and fees. She was given 783 days of custody credits, which included 119 actual days, 119 days of good-time/work-time and 545 days previously served.

On August 21, 2012, Beverly filed a notice of appeal and a request for a certificate of probable cause. The request for a certificate of probable cause was denied. We appointed counsel to represent Beverly and he filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) on May 17, 2013. We advised Beverly she could file a supplemental brief if she wished. Beverly submitted a letter brief on September 13,

2013. Among other things, she noted that she received an “illegal sentence.” After reviewing the record pursuant to our obligations under *Wende*, we invited supplemental briefing on the whether the trial court’s failure to impose or strike the four year sentencing enhancement under Penal Code section 12022.95 resulted in an unauthorized sentence and, if so, what course of action needs to be taken. We found no other issues.

In response, the parties concur that it was an unauthorized sentence and suggest the proper course of action to be a limited remand solely to allow the trial court to determine whether to impose the enhancement under Penal Code section 12022.95 or exercise its discretion to strike under Penal Code section 1385, subdivision (a). We agree. (*People v. Solorzano* (2007) 153 Cal.App.4th 1026, 1041.)

DISPOSITION

We remand to the trial court solely to exercise its discretion to strike the sentencing enhancement allegations under Penal Code section 1385, subdivision (a) or not. The judgment is otherwise affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.