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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVSHAWN LARAY
HENNES,

Defendant and Appellant.

B280094

(Los Angeles County
Super. Ct. No. YA088396)

APPEAL from an order of the Superior Court of Los Angeles County, Chet L. Taylor, Judge. Affirmed as modified.

Sally Patrone Brajevich, 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, Scott A. Taryle and Pamela C. Hamanaka, Deputy Attorneys General, for Plaintiff and Respondent.

Davshawn Laray Hennes was convicted following a jury trial of two counts of residential burglary and one count of attempted residential burglary. In a bifurcated bench trial the court found true the special allegations that Hennes had suffered two prior serious felony convictions within the meaning of both Penal Code section 667, subdivision (a), and the three strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12). After granting in part Hennes's motion to dismiss his prior strike convictions, the court sentenced him to an aggregate indeterminate state prison term of 45 years four months to life.

In his original appeal we affirmed Hennes's convictions and the trial court's decision to deny in part his motion to dismiss his prior strike convictions but remanded the matter to permit the trial court to correct sentencing errors. (*People v. Hennes* (Aug. 29, 2016, B264125) [nonpub. opn.].) On November 4, 2016 the trial court resentenced Hennes to an aggregate indeterminate state prison term of 54 years four months to life.

Because the second sentencing hearing was held prior to issuance of the remittitur in Hennes's appeal, however, a further sentencing hearing was held on February 24, 2017. This time Hennes was sentenced to an aggregate indeterminate state prison term of 47 years eight months to life: 25 years to life as a third strike offender on count one (residential burglary), plus two five-year prior serious felony enhancements; plus a consecutive term of two years (the lower term) on count three (residential burglary), plus two five-year prior serious felony enhancements; plus a consecutive term of eight months (one-third the middle term of two years) on count two (attempted residential burglary). The court dismissed both prior strike allegations on counts two and three.

Hennes appeals from the sentencing order, asking only that this court correct errors that appear in the minutes of the February 24, 2017 sentencing hearing and the abstract of judgment. The Attorney General agrees that correction is necessary; we do, as well.

Although the reporter's transcript from the February 24, 2017 sentencing hearing reflects Hennes's sentence of 47 years eight months, the February 24, 2017 minute order incorrectly states the subordinate consecutive term for count two is 16 months, rather than eight months, and, as a result, the aggregate sentence is misstated as 48 years four months to life. The abstract of judgment, in addition to repeating the mistake from the minute order indicating a 16-month term for count two, states the court imposed a determinate term of 25 years on count one, rather than an indeterminate third strike sentence of 25 years to life.

We order the correction of these clerical errors so that the minute order and abstract of judgment accurately reflect the court's sentencing pronouncement. (See *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 [record of court's oral pronouncement controls over clerk's minute order]; *People v. Mitchell* (2001) 26 Cal.4th 181, 186-187 [appellate court may correct clerical errors on its own motion or upon application of the parties].)

DISPOSITION

The minute order of February 24, 2017 is modified to reflect the trial court's imposition of an eight-month subordinate term on count two and an aggregate indeterminate state prison term of 47 years eight months to life as Hennes's sentence. The superior court is directed to prepare a corrected abstract of judgment, using the Judicial Council form for an indeterminate term with an attachment for the determine terms, and to forward it to the Department of Corrections and Rehabilitation.

PERLUSS, P. J.

We concur:

SEGAL, J.

MENETREZ, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.