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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.

TRAVEION DESHAWN TAYLOR,

Defendant and Appellant.

B232652

(Los Angeles County  
Super. Ct. No. MA041722)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Charles A. Chung, Judge. Affirmed as modified.

Christine C. Shaver, 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, Senior Assistant Attorney General, Scott A. Taryle and  
Russell A. Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

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Traveion Deshawn Taylor was convicted by a jury on one count of felony child abuse (Pen. Code, § 273a, subd. (a)),<sup>1</sup> with a special finding he had personally inflicted great bodily injury on the victim, his son, who was under the age of five years (§ 12022.7, subd. (d)).<sup>2</sup> In a bifurcated proceeding the trial court found Taylor had suffered one prior serious or violent felony conviction within the meaning of section 667, subdivision (a)(1), and the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and had served a separate prison term for a felony within the meaning of section 667.5, subdivision (b), all based on Taylor’s 2003 conviction for burglary.

Taylor was sentenced to an aggregate state prison term of 24 years: the upper term of six years doubled pursuant to the Three Strikes law plus six years for the great bodily injury enhancement, five years for the prior serious felony enhancement and one year for the prior prison term enhancement.

On appeal Taylor contends, and the People concede, he was improperly sentenced for the prior prison term enhancement based on the same offense for which he received a five-year prior serious felony enhancement. Taylor also asks that we review the in camera proceeding conducted by the trial court to determine whether it properly concluded there was no discoverable material to which he was legally entitled under Evidence Code sections 1043 and 1045 and *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We affirm the judgment as modified.

## **DISCUSSION**

### **1. *The Pitchess Motion***

Pursuant to Evidence Code sections 1043 and 1045, Taylor, appearing in propria persona, moved for pretrial discovery of information in the personnel records of Los Angeles County Sheriff Deputies Eliott Uribe, Tim O’Quinn and Scott Mitchell concerning any complaints or discipline involving dishonesty. The Los Angeles County Sheriff’s Department opposed the motion.

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The jury found Taylor not guilty of a second count of attempted murder (§§ 187, 664).

The trial court found good cause and granted the motion as to Deputy Uribe only, limited to allegations of dishonesty.<sup>3</sup> At the in camera hearing the trial court analyzed all the incidents in Deputy Uribe's file to determine whether they were within the five-year review period allowed under *Pitchess* and relevant to Taylor's case and described each of them thoroughly for the record. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) At Taylor's request we have reviewed the sealed transcript of the in camera proceedings and conclude the trial court properly exercised its discretion in finding none of the incidents was appropriate for disclosure under *Pitchess*. (*Ibid.*)

## 2. *Imposition of the One-year Prior Prison Term Enhancement*

In sentencing Taylor, the trial court improperly imposed both a five-year enhancement pursuant to section 667, subdivision (a)(1), and a one-year enhancement pursuant to section 667.5, subdivision (b), based Taylor's 2003 burglary conviction. (*People v. Jones* (1993) 5 Cal.4th 1142, 1150 [enhancements under both §§ 667, subd. (a)(1) and 667.5, subd. (b) cannot be applied to the same prior offense; "when multiple statutory enhancement provisions are available for the same prior offense, one of which is a section 667 enhancement, the greatest enhancement, but only that one, will apply"].) The court should have imposed and then stayed execution of the additional one-year term. (Cal. Rules of Court, rule 4.447; see *People v. Walker* (2006) 139 Cal.App.4th 782, 794, fn. 9; *People v. Lopez* (2004) 119 Cal.App.4th 355, 364.) Accordingly, the judgment is modified to reflect a stay of execution of the one-year term pursuant to section 667.5, subdivision (b), based on the trial court's true finding as to Taylor's 2003 conviction and prison sentence in Los Angeles Superior Court case No. TA069942. The stay shall become permanent upon Taylor's service of the portion of his sentence not stayed.

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<sup>3</sup> The minute order of the March 29, 2010 proceedings incorrectly reflects the court found good cause only as to Deputy Scott Mitchell.

### **DISPOSITION**

The judgment is ordered modified to reflect a stay of execution of the one-year sentence enhancement pursuant to section 667.5, subdivision (b). As modified, the judgment is affirmed. The superior court is directed to prepare a corrected abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.