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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ARMANDO DIAZ,

Defendant and Appellant.

B238910

(c/w B241417)

(Los Angeles County

Super. Ct. No. NA056244)

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

Tomson T. Ong, Judge. Affirmed as modified.

California Appellate Project, Jonathan B. Steiner and Richard B. Lennon, 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, Scott A. Taryle and Kimberley J. Baker-Guillemet, Deputy Attorneys General, for Plaintiff and Respondent.

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On appeal, Jorge Armando Diaz (Diaz) argues that his prison sentence of 21 years and two months based on three felony convictions and one misdemeanor conviction is unlawful because it includes a consecutive six-month sentence on the misdemeanor conviction that should be served in county jail. The People concede. We vacate the six-month misdemeanor prison sentence and modify the prison sentence on the felony convictions by reducing it to 20 years eight months. The trial court is directed to correct the abstract of judgment to reflect a prison sentence of 20 years eight months on the felony convictions and a jail sentence of six months for the misdemeanor conviction, the latter to be served at the conclusion of the prison sentence.

As modified, the judgment is affirmed.

### **FACTS**

Diaz was convicted on two counts of assault on a peace officer (Pen. Code, § 245, subd. (c)),<sup>1</sup> one count of unlawful taking or driving of an automobile (§ 666.5; Veh. Code, § 10851) and one count of misdemeanor evading (Veh. Code, § 2800.1, subd. (a)). The trial court found that Diaz suffered one prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (c)-(f)), two prior serious felony convictions (§ 667, subd. (a)(1)), and two prior prison terms (§ 667.5, subd. (b)).

Diaz's total sentence was 26 years two months. With respect to the misdemeanor evading count, the trial court stated that Diaz "is ordered committed to the Department of Corrections for [a] period of [six] months to run consecutive with [the sentence on count one for assault on a peace officer]." Regarding the same count for misdemeanor evading, the sentencing minute order stated that Diaz was sentenced to "serve 6 months in Los Angeles County Jail." The abstract of judgment provided: "As to [the misdemeanor evading count], [Diaz] to serve 6 months in L.A. County Jail and may be served in any penal institution."

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

In *People v. Diaz* (Oct. 19, 2005, B170801) [nonpub. opn.], we vacated one of the two 5-year serious felony conviction enhancements and reduced Diaz's sentence from 26 years and two months to 21 years and two months.

On December 6, 2011, Diaz filed a petition for writ of mandate that argued, inter alia, for the recalculation of conduct credits. The petition was denied and he appealed in case No. B238910. On April 16, 2012, Diaz moved to correct the abstract of judgment to reflect that the six-month misdemeanor sentence for evading in violation of Vehicle Code section 2800.1, subdivision (a) is not included in the state prison portion of the sentence. When the motion was denied, Diaz appealed in case No. B241417.

We consolidated Diaz's two appeals.

### **DISCUSSION**

Misdemeanor evading of a peace officer in violation of Vehicle Code section 2800.1, subdivision (a) is punishable by imprisonment in county jail for not more than one year. Thus, the consecutive sentence of six months in prison for violating Vehicle Code section 2800.1, subdivision (a) must be stricken. (*People v. Harbolt* (1988) 206 Cal.App.3d 140, 160.) As a result, Diaz's prison term is be reduced to a total of 20 years and eight months. Because the trial court determined that the term for evading is to be a consecutive sentence, Diaz must serve six months in county jail at the conclusion of his modified prison sentence. (*Ibid.*)

Diaz does not address the calculation of conduct credits in his appellate brief. We deem the issue waived.

## DISPOSITION

The six-month prison sentence for violation of Vehicle Code section 2800.1, subdivision (a) is vacated and Diaz's prison sentence is reduced to 20 years eight months. The trial court is directed to prepare an abstract of judgment providing that Diaz's prison sentence is 20 years eight months and that when the prison sentence has concluded, he must serve six months in county jail. Additionally, the trial court is directed to forward the new abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
CHAVEZ