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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE NUNEZ,

Defendant and Appellant.

2d Crim. No. B294576
(Super. Ct. No. TA084751)
(Los Angeles County)

We remand for the trial court to exercise its discretion on whether to impose concurrent sentences.

A jury found Jorge Nunez guilty of three counts of attempted willful, deliberate, premeditated murder (Pen. Code,¹ §§ 187, subd. (a), 189, subd. (a), 664; counts 3, 4, 7), two counts of shooting at an occupied motor vehicle (§ 246; counts 5, 9), and one count of shooting at an inhabited dwelling (§ 246; count 8). The jury also found true, as to counts 3, 4, and 5, that a principal

¹ All further statutory references are to the Penal Code unless otherwise stated.

personally and intentionally discharged a firearm, a handgun, which proximately caused great bodily injury (§ 12022.53, subds. (d), (e)(1)), that a principal personally and intentionally discharged a firearm, a handgun (§ 12022.53, subds. (c), (e)(1)), and that a principal personally used a firearm, a handgun (§ 12022.53, subds. (b), (e)). As to counts 3, 4, 7, 8, and 9, the jury found true that the offenses were committed for the benefit of, at the direction of, and in association with, a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members (§ 186.22, subd. (b)(1)(C)). As to counts 5, 8, and 9, the jury found true that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further, and assist in criminal conduct by gang members, causing the sentence to be pursuant to section 186.22, subdivision (b)(4). As to counts 7, 8, and 9, the jury found true that appellant personally and intentionally discharged a firearm, a rifle (§ 12022.53, subd. (c)), and that appellant personally used a firearm, a rifle (§ 12022.53, subd. (b)).

The trial court initially sentenced Nunez to 170 years to life. The court imposed consecutive sentences based on the crimes having been committed against different victims at different times.

The California Department of Corrections and Rehabilitation sent a letter to the trial court noting possible sentence discrepancies and miscalculations.

The trial court held a new sentencing hearing. The court reimposed the same sentence, except on count 7, the court corrected the sentence from 20 years to 35 years to life, for a total sentence of 185 years to life. The court rejected Nunez's request

that the sentences be concurrent stating, “It has to be consecutive under the law. . . . These are different victims at different locations at different times”

DISCUSSION

Nunez contends the trial court erred in believing it was required to impose consecutive sentences. The People concede the point.

Unless a statute expressly provides to the contrary, the trial court has the discretion to impose either consecutive or concurrent terms. (*People v. Rodriguez* (2005) 130 Cal.App.4th 1257, 1262.) Here, no statute requires consecutive terms. But the record shows the trial court believed it had no discretion. The appropriate remedy is to remand for resentencing so the trial court can exercise its discretion. (*People v. Deloza* (1998) 18 Cal.4th 585, 600.)

DISPOSITION

The case is reversed and remanded for resentencing.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Tammy Chung Ryu, Judge
Superior Court County of Los Angeles

Jenny M. Brandt, under appointment by the Court of
Appeal, for Defendant and Appellant.

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