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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.

MELVIN JAMES FRANKLIN,

Defendant and Appellant.

2d Crim. No. B271247
(Super. Ct. No. BA439134)
(Los Angeles County)

A jury convicted Melvin James Franklin of possession of a firearm by a felon. (Pen. Code,¹ § 29800, subd. (a)(1).) In bifurcated proceedings, Franklin admitted that he served a prison term for convictions in 1999 for possession of a controlled substance for sale (Health & Saf. Code, § 11351) and possession of a firearm by a felon (former § 12021, subd. (a)(1)); a prison term for a conviction in 2004 for attempted robbery (§§ 664/211);

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

and a prison term for a conviction in 2009 for possession of cocaine base for sale (Health & Saf. Code, § 11351.5). The trial court sentenced him to six years in state prison: two years on the new offense, plus 4 one-year terms on the prior prison terms pursuant to section 667.5, subdivision (b).

Franklin contends, and the People concede, that the trial court erred when it sentenced him to four years on the prior prison terms instead of three. We agree. Though Franklin admitted four prior convictions, he admitted only three prior prison terms. (§ 667.5, subd. (g) [prior prison term defined as “a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes”].) We strike the fourth prior prison term enhancement. (*People v. Riel* (2000) 22 Cal.4th 1153, 1203; see also *People v. Scott* (1994) 9 Cal.4th 331, 354 [unauthorized sentence may be corrected at any time].)

Franklin also argues that he did not waive his contention when his trial attorney did not object to the sentencing error because his attorney’s failure to object was prejudicial ineffective assistance of counsel. Because we agree that the trial court erred, Franklin’s ineffective assistance of counsel argument is moot.

DISPOSITION

We modify the judgment by striking one of the one-year prior prison term enhancements the trial court imposed pursuant to Penal Code section 667.5, subdivision (b). The court shall amend the abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Carol H. Rehm, Jr., Judge

Superior Court County of Los Angeles

James E. Jones, 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, Shawn McGahey Webb, Supervising
Deputy Attorney General, David A. Voet, Deputy Attorney
General, for Plaintiff and Respondent.