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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.

CHARLES EDWIN FREEMAN,

Defendant and Appellant.

2d Crim. No. B283554  
(Super. Ct. No. SA090602)  
(Los Angeles County)

Charles Edwin Freeman appeals a postjudgment order denying his petition to vacate a one-year prior prison term enhancement after the underlying prior felony conviction, a 2008 conviction for drug possession (Health & Saf. Code, § 11377), was reduced to a misdemeanor pursuant to Proposition 47. (Pen. Code, § 1170.18, subds. (f) & (g).)<sup>1</sup> We reverse and remand with directions to strike the one-year prison prior term enhancement with respect to the prison term served in Case No. YA071409,

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

and to recalculate the aggregate sentence. (*People v. Buycks* (2018) 5 Cal.5th 857, 893-894 [discussing full resentencing rule]; see, e.g., *People v. Sellner* (2015) 240 Cal.App.4th 699, 701-702.)

In 2016, appellant pled guilty to four counts of counterfeit access card forgery (counts 1-4; Pen. Code, § 484F, subd. (a)) and admitted four prior prison term enhancements (§ 667.5, subd. (b)). The trial court sentenced appellant to three years felony jail (§ 1170, subds. (h)(1) & (h)(2)) and imposed two consecutive prior prison term enhancements (§ 667.5, subd. (b)) - a one-year enhancement for a prison term served on a 2008 conviction for drug possession (Health & Saf. Code, § 11377; Case No. YA071409), and a second one-year enhancement for a prison term served on a 2010 conviction for unauthorized use of personal identifying information (§ 530.5; Case No. SA075448). The total aggregate sentence was five years.

On May 16, 2017, appellant filed a petition to vacate the 2008 prior prison term enhancement after the trial court, in January 2017, redesignated the 2008 conviction for drug possession as a misdemeanor. (§ 1170.18, subd. (f); Case No. YA071409.) The trial court declined to vacate the prior prison term enhancement, finding that the redesignation of the 2008 conviction to a misdemeanor did not affect the one-year prior prison term enhancement or current sentence.<sup>2</sup>

*People v. Buycks*

Appellant correctly argues that the redesignation of his 2008 conviction as a misdemeanor retroactively negates the

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<sup>2</sup> The trial court relied on *People v. Johnson* (2017) 8 Cal.App.5th 111 and *In re Diaz* (2017) 8 Cal.App.5th 812. Both cases were disapproved in *People v. Buycks, supra*, 5 Cal.5th at p. 888, fn. 12.)

one-year prison prior enhancement. In *People v. Buycks*, *supra*, 5 Cal.5th 857, our Supreme Court recently held that “Proposition 47 and the *Estrada* rule [*In re Estrada* (1965) 63 Cal.2d 740] authorize striking th[e prison prior term] enhancement if the underlying felony conviction attached to the enhancement has been reduced to a misdemeanor . . . .” (*Id.* at p. 888.) The court explained: “On its face, section 667.5, subdivision (b) does not expressly state that a prior felony conviction is required [to impose a prison prior term enhancement]. But the provision’s reference to a prior ‘prison term’ necessarily must subsume the existence of a prior felony conviction that justified the imposition of that prison term.” (*Id.* at p. 889.)

The same principle applies here. Where a prior felony conviction is redesignated a misdemeanor conviction, it becomes a misdemeanor for all purposes. (§ 1170.18, subd. (k).) “Consequently, section 1170.18, subdivision (k) can negate a previously imposed section 667.5, subdivision (b), enhancement when the underlying felony attached to that enhancement has been reduced to a misdemeanor under the measure.” (*People v. Buycks*, *supra*, 5 Cal.5th at pp. 890.)

*Disposition*

We reverse and remand with directions to strike the one-year prison prior term enhancement with respect to the prior prison term served in Case No. YA071409, and to recalculate the aggregate sentence. (*People v. Buycks*, *supra*, 5 Cal.5th at pp. 893-894.)

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We concur:

GILBERT, P. J.

YEGAN, J.

TANGEMAN, J.

Mark E. Windham, Judge

Superior Court County of Los Angeles

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