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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEX JOSEPH ALEXANDER,

Defendant and Appellant.

E079045

(Super.Ct.No. FVI20001074)

OPINION

APPEAL from the Superior Court of San Bernardino County. Kawika Smith, Judge. Affirmed in part, vacated in part, and remanded with directions.

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, A. Natasha Cortina, and Stephanie A. Mitchell, Deputy Attorneys General, for Plaintiff and Respondent.

Alex Joseph Alexander appeals from his convictions of being a felon-in-possession of a firearm and ammunition. (Pen. Code, § 29800, subd. (a)(1) (§ 29800(a)(1)); Pen. Code § 30305, subd. (a)(1) (§ 30305(a)(1)); unlabeled statutory references are to this code.) He argues that section 29800(a)(1) and section 30305(a)(1) are facially invalid under the Second Amendment as interpreted by *New York State Rifle & Pistol Association, Inc. v. Bruen* (2022) 597 U.S. __ [142 S.Ct. 2111] (*Bruen*). We concluded that the provisions are facially valid in *People v. Alexander* (May 11, 2023, E078846) __ Cal.App.5th __ [2023 Cal.App. Lexis 366]. We agree with the parties about two sentencing errors. We accordingly vacate the sentence and remand for resentencing. We otherwise affirm.

BACKGROUND

In May 2020, Alexander was living with his sister, Tiffany J. One day while Alexander was at work, Tiffany texted Alexander that there was a problem at the house. Alexander returned home.

When Alexander arrived at the house, his cousin, T. Simms, was seated in a car in front of the house. Alexander asked Simms to leave, but Simms refused. Simms hit Alexander in the face and then picked up a rock and hit Alexander in the face with the rock a couple of times. Simms threatened to kill Alexander and “everybody in the house.” Alexander was afraid.

Alexander stored a handgun in a mattress in the house. Alexander got his gun and fired several shots toward Simms. Alexander aimed above Simms. Alexander was not

trying to kill Simms. Alexander wanted Simms to leave the property and was trying to “keep [Simms] from hurting” anyone. A video recording of the incident taken from a neighbor’s surveillance camera was played for the jury.

Law enforcement arrived and detained Alexander. Law enforcement found a loaded .40-caliber semiautomatic handgun in the backyard in an area to which Alexander ran after the shooting.

The jury convicted Alexander of one count each of being a felon-in-possession of a firearm (§ 29800(a)(1); count 4) and of ammunition (§ 30305(a)(1); count 5). The jury deadlocked on the remaining counts (attempted murder, assault with a firearm, and discharging a firearm with gross negligence), which the trial court later dismissed at the prosecution’s request. In a bifurcated proceeding, the trial court found true that Alexander had one prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and also found true the allegation that Alexander was out on bail in another criminal proceeding at the time of the offenses (§ 12022.1, subd. (b)) as to both count 4 and count 5.

The trial court sentenced Alexander to an aggregate term of seven years and four months in state prison. The sentence consisted of four years for count 4 (the midterm doubled because of the strike), 16 months for count 5 (one-third the midterm doubled), and two years for the on-bail enhancement for count 4. The court imposed a two-year sentence for the second on-bail enhancement but stayed it.

DISCUSSION

A. *The Second Amendment*

Alexander challenges the facial validity of section 29800(a)(1) and section 30305(a)(1) under the Second Amendment in light of *Bruen*, *supra*, 142 S.Ct. 2111. We rejected identical challenges by Alexander in a published opinion in another case.

(*People v. Alexander*, *supra*, __ Cal.App.5th __ [2023 Cal.App. Lexis 366, at p. *11].)

We accordingly conclude that section 29800(a)(1) and section 30305(a)(1) are facially valid under the Second Amendment.

B. *Section 654*

Section 654 prohibits multiple punishments for “different crimes [that] were completed by a ‘single physical act.’” (*People v. Corpening* (2016) 2 Cal.5th 307, 311; § 654, subd. (a).) When two offenses arise from a single act but require different elements of proof, a defendant may be properly convicted of both but not punished for both. (*People v. Rocha* (1978) 80 Cal.App.3d 972, 975-977.) If “a defendant suffers two convictions, punishment for one of which is precluded by section 654, that section requires the sentence for one conviction to be imposed, and the other imposed and then stayed.” (*People v. Deloza* (1998) 18 Cal.4th 585, 591-592.) The trial court has discretion to choose which sentence to stay. (§ 654, subd. (a); *People v. Mani* (2022) 74 Cal.App.5th 343, 379.)

Alexander argues that the trial court violated section 654 by imposing sentences for his convictions under section 29800(a)(1) (count 4) and section 30305(a)(1) (count 5).

The People concede the error, and we agree. The trial court should have stayed the sentence for one of the convictions under section 654 because Alexander's possession of a firearm and ammunition loaded into the firearm were the same act. (See *People v. Lopez* (2004) 119 Cal.App.4th 132, 138 [holding § 654 prohibited multiple punishment for felon-in-possession of a firearm and ammunition given that "all of the ammunition [was] loaded into the firearm"].) We remand the matter to the trial court to determine whether the sentence for count 4 or count 5 should be stayed under section 654.

C. Multiple On-Bail Enhancements

The trial court imposed an on-bail enhancement under section 12022.1, subdivision (b), for both count 4 and count 5 but stayed the sentence for the count 5 enhancement. The parties agree, as do we, that the trial court erred by imposing the second on-bail enhancement. Under the circumstances of this case, only one on-bail enhancement should have been imposed. (See *People v. Augborne* (2002) 104 Cal.App.4th 362, 377.)

DISPOSITION

We vacate Alexander's sentence and remand the matter to the trial court for resentencing to determine whether to stay the sentence for count 4 or count 5 under section 654 and to impose only one enhancement under section 12022.1, subdivision (b). In all other respects, the judgment is affirmed.

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MENETREZ
J.

We concur:

McKINSTER
Acting P. J.
MILLER
J.