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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DAVID JOHNSON, Defendant and Appellant.	B163472 (Los Angeles County Super. Ct. No. TA065809)

APPEAL from a judgment of the Superior Court of Los Angeles County, Victoria M. Chavez, Judge. Affirmed., reversed in part and remanded.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Joseph P. Lee and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant David Johnson (Johnson) was convicted of second degree robbery (Pen. Code,[1] § 211) and assault with a deadly weapon (§ 245, subd. (a)(1)). Sentenced to a total of eight years in prison for the offenses and sentence enhancements, Johnson challenges his conviction because the trial court allowed the prosecutor to impeach a codefendant with extrajudicial statements that also implicated Johnson—in violation of what Johnson argues was the prosecutor's agreement that no such statements would be offered at trial. He also appeals his sentence on the grounds that (1) he did not voluntarily and intelligently admit his prior convictions because he was not adequately advised of his constitutional rights; and (2) his assault sentence should be stayed under section 654. We affirm the conviction but reverse the true findings on the prior prison term allegations and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Late in the evening on July 17, 2002, Alejandro Morales (Morales) observed Johnson, Willard Beasley (Beasley) and Alice Marie Hicks (Hicks) sitting in a gray Cutlass automobile parked in the parking lot of the convenience store where Morales had gone to purchase beer and coffee. After leaving the store, Morales again saw the Cutlass as he walked toward a taco stand.

Johnson and Beasley exited the car and commanded Morales to give them his money and the beer. Morales threw the beer and the contents of his pockets, including $45 in cash, to the ground. Beasley bent to pick up the items. Johnson hit Morales with a tire iron. Johnson tried to strike Morales again with the tire iron, but Morales intercepted the blow, threw the tire iron away, and fled.

Within hours, Johnson, Beasley, and Hicks were apprehended in the gray Cutlass. A tire iron and beer of the same brand Morales had purchased were recovered from the

[1] All further statutory references are to the Penal Code.

car. Johnson was charged by information with second degree robbery (§ 211) and assault with a deadly weapon (§ 245, subd. (a)(1)), with the additional allegations that in the robbery, a principal was armed with a handgun (§ 12022, subd. (a)(1)) and that Johnson had previously suffered four prior convictions within the meaning of section 667.5, subdivision (b).

Johnson, Beasley, and Hicks were tried together. Prior to the trial, Beasley's counsel, joined by counsel for the other defendants, moved to sever Beasley's trial from that of his codefendants because Johnson and Hicks had made out-of-court statements that implicated Beasley. After negotiation among the parties, the motion to sever was withdrawn. The prosecution did not introduce any extrajudicial statements by the defendants in its case-in-chief, but after Beasley testified in his own defense, over objections the prosecutor introduced Beasley's out-of-court statements to impeach his trial testimony.

Johnson was convicted of robbery and assault with a deadly weapon. The jury found not true the allegation that a principal was armed with a firearm during the robbery. The trial had been bifurcated on the issue of Johnson's prior convictions, but after the guilty verdicts Johnson admitted serving three prior separate prison terms within the meaning of section 667.5, subdivision (b). He was sentenced to the upper term of five years for the robbery and three years for prior prison terms. The trial court rejected Johnson's argument that the sentence for assault should be stayed pursuant to section 654, but imposed a three-year assault sentence running concurrently with the robbery sentence. Johnson's total sentence was eight years in state prison. Johnson appeals.

DISCUSSION

I. The Introduction of Beasley's Out-of-Court Statements

Johnson argues that his conviction should be reversed because the prosecution violated what he characterizes as an express agreement not to introduce any out-of-court

statements by the defendants by impeaching Beasley with his prior statements—statements that implicated Johnson in the charged offenses. Johnson bases his argument on *Santobello v. New York* (1971) 404 U.S. 257 and *Mabry v. Johnson* (1984) 467 U.S. 504 (when consideration for a plea bargain includes a promise by the prosecutor, due process requires that the promise be fulfilled) and *People v. Quartermain* (1997) 16 Cal.4th 600, 620 (rule extended to explicit promises by the prosecution that statements would not be used at trial).

No promise was breached by the prosecution. The motion to sever, filed on October 3, 2002 by Beasley's counsel, requested severance because the prosecution was expected to offer out-of-court statements by Johnson and Hicks that implicated Beasley. When the motion was discussed in court on October 24, 2002, counsel for Johnson and Hicks orally joined in the motion but noted that based on the prosecutor's representations there appeared to be no need for severance.

The prosecutor explained to the court that she had abundant evidence to introduce at trial without resorting to the defendants' extrajudicial statements to prove her case. She said, "It is the People's position at this particular point that we have no intent on [*sic*] using either one of the three defendants' statements. We have the victim under subpoena. He testified at the preliminary hearing. He will be here to testify at the trial on Monday. We have the physical evidence that was recovered from the car that the defendants were in. And there is no need for the People to use their statements at this particular point to convict them of these crimes." The defendants withdrew the motion to sever.

Although we recognize that the prosecutor did not expressly reserve the right to introduce a defendant's extrajudicial statements if that defendant chose to testify at trial, we cannot understand the agreement in any other manner. The motion to sever was based on the *Aranda-Bruton*[2] rule—but that doctrine precludes the introduction of extrajudicial

[2] (*People v. Aranda* (1965) 63 Cal.2d 518 (*Aranda*), partially abrogated by constitutional amendment as stated in *People v. Fletcher* (1996) 13 Cal.4th 451, 465; *Bruton v. United States* (1968) 391 U.S. 123 (*Bruton*).)

statements by one defendant that implicate a jointly tried codefendant *only* when the defendant who made the statements does not testify at trial. (*Nelson v. O'Neil* (1971) 402 U.S. 622, 626-630 [when declaring codefendant testifies at trial, no constitutional violation in permitting the introduction of his extrajudicial statements incriminating codefendant]; *People v. Boyd* (1990) 222 Cal.App.3d 541, 561-563 [following Proposition 8, California law coextensive with federal rule requiring exclusion of codefendant's extrajudicial statements incriminating defendant only when the declarant does not testify at trial].) A blanket agreement precluding the use of incriminating out-of-court statements at trial under any circumstances—even when they were admissible for impeachment after a defendant took the stand—would far exceed the scope of the agreement necessary to remedy the potential *Aranda-Bruton* problem that prompted the motion to sever.

That the parties understood the agreement to preclude the prosecutor from introducing the defendants' extrajudicial statements in her case-in-chief but to permit their use if the declaring defendant testified at trial is evident from pretrial conversations between counsel and the trial court only four days after the motion to sever was withdrawn. Beasley's counsel told the court that she "had a motion to sever based on statements that were included in the police report. But after discussions on the record, the People are not using any of the statements against the codefendants. I withdrew that motion. And I just wanted to make sure that's clear."

The court asked, "So no statements of any defendants are being used?" The prosecutor responded, "*Correct. Unless they take the stand.*" (Italics added.) The court replied, "Right. Obviously that's a little bit different," and remarked that the same rule applied with respect to the bifurcation of trial on the issue of Johnson's prior conviction allegations—that is, they would not be mentioned if he did not testify; but if he testified, appropriate prior convictions could be used to impeach him.

If any of the defendants' counsel had believed that the prosecution had agreed not to use the defendants' out-of-court statements at trial in any manner whatsoever—even if the declaring defendants testified—the prosecutor's statement that no statements would

be used "unless they take the stand" surely would have prompted counsel both to object that the prosecutor was misrepresenting or altering the agreement and to renew the previously-withdrawn motion to sever. Because the trial was scheduled to begin that day, it would have been all the more critical for any misunderstanding regarding out-of-court statements and severance to be raised at that juncture. The three defense lawyers, however, made no comment concerning the prosecutor's statement, the agreement, or the motion to sever, indicating that all parties understood the agreement to prohibit the prosecutor from introducing any defendant's extrajudicial statements incriminating another defendant unless the defendant who made the statements testified at trial.

The prosecutor introduced Beasley's extrajudicial statements incriminating Johnson only after Beasley testified. Johnson has therefore failed to make the "threshold" showing that "the prosecution's use of the statements breached the agreement" (*People v. Quartermain*, *supra*, 16 Cal.4th at p. 617), and his conviction cannot be reversed on this ground.

II. Admonitions and the Admission of Prior Prison Terms

After the trial on the robbery and assault charges, Johnson waived his right to a jury trial on his prior conviction allegations and admitted he had served three prior separate prison terms within the meaning of section 667.5, subdivision (b). He seeks a new sentencing hearing on the ground that this admission was not voluntary and intelligent under the totality of the circumstances because he was not advised of his right to confront witnesses and his right against self-incrimination.

"[B]efore a court accepts an accused's admission that he has suffered prior felony convictions," the court must provide "express and specific admonitions as to the constitutional rights waived by an admission" (*In re Yurko* (1974) 10 Cal.3d 857, 863)—the rights of confrontation, jury trial, and against self-incrimination. (*In re Tahl* (1969) 1 Cal.3d 122, 132.) Here, the admonitions were insufficient because the trial court did not advise Johnson of his right to confront witnesses and his right against self-incrimination.

An admission is valid notwithstanding the inadequacy of the admonitions if the record affirmatively shows it was made voluntarily and intelligently under the totality of the circumstances. (*People v. Howard* (1992) 1 Cal.4th 1132, 1175 (*Howard*); *People v. Moore* (1992) 8 Cal.App.4th 411, 417-418 [voluntariness and intelligence must be discernible from the record; record may not be silent].) The issue presented here—whether an admission of a prior conviction may be voluntary and intelligent when the defendant was admonished only of his right to a jury trial—is presently pending before the California Supreme Court. (*People v. Mosby* (2002) 95 Cal.App.4th 967, review granted May 1, 2002, S104862.)

The Attorney General argues that Johnson's admission was voluntary and intelligent because he had just completed a jury trial in which he exercised his right against self-incrimination by declining to testify and his right to confront witnesses against him through his counsel's cross-examination. We are aware of no published decision in which a California court has concluded that a criminal defendant's experience of a jury trial on the underlying charges, without more, was sufficient to establish the requisite voluntariness and intelligence of the admission of a prior conviction when the defendant was not advised in some manner of the rights to confrontation and against self-incrimination. To the contrary, when these admonitions were neither given nor at least indirectly communicated to the defendant, courts are unable to conclude that the record affirmatively demonstrates that the defendant knew of these rights and voluntarily and intelligently admitted the prior conviction.

For example, in *People v. Garcia* (1996) 45 Cal.App.4th 1242, at page 1247 (*Garcia*), the defendant was told he had a right to a jury trial on his prior convictions. The trial court then said that he could "waive that right to a jury trial and have the court make that determination, or simply admit that the priors are true." (*Ibid*.) The court of appeal concluded that the defendant was not advised of his confrontation and self-incrimination rights and that "neither the prosecutor nor the court gave defendant any explanation of what would occur at a trial on the prior convictions. Thus there was no advice from which the defendant could infer he had the right to confront witnesses in

such a trial even if he had observed he had that right in the trial-in-chief." (*Id*. at p. 1248.) Similarly, in *People v. Torres* (1996) 43 Cal.App.4th 1073, at pages 1080-1082 (*Torres*), the findings on the defendant's prior conviction allegations were reversed because the defendant expressly waived his right to a jury trial but was not advised of his confrontation and self-incrimination rights, and the record did not reveal that the nature of those rights had been communicated to and waived by the defendant in the course of admitting his prior convictions. (See also *People v. Carroll* (1996) 47 Cal.App.4th 892, 896-898 (*Carroll*) [defendant informed of right to jury trial on prior conviction allegations prior to his first trial, which ended in a mistrial; no admonishments concerning self-incrimination or confrontation of witnesses were ever given; prior conviction admission reversed]; *People v. Van Buren* (2001) 93 Cal.App.4th 875, 883-884 (*Van Buren*) [no mention of rights of confrontation or against self-incrimination and no evidence that defendant "understood how these rights applied to proving his prior conviction, or whether he was prepared to waive those rights as a condition to admitting his prior conviction"]; cf. *People v. Campbell* (1999) 76 Cal.App.4th 305, 310 [knowing and voluntary character of admission not inferred from defendant's familiarity with criminal justice system]; *People v. Johnson* (1993) 15 Cal.App.4th 169, 178 [although defendant was no doubt familiar with rights to jury trial, to confrontation, and against self-incrimination because he had just exercised them, reviewing court cannot infer from a silent record that defendant was aware of those rights and was prepared to waive them as a condition to admitting his prior offenses].)

The Attorney General analogizes this case to *Howard*, *supra*, 1 Cal.4th at page 1180, in which the Supreme Court held that the defendant's admission of his prior conviction was voluntary and intelligent despite the failure to advise him of his right against self-incrimination. Because the *Howard* defendant was advised of both his jury trial and confrontation rights and was told of his "right to force the District Attorney to prove this and to bring in evidence and witnesses" (*id*. at p. 1179), the record revealed that the defendant understood that he had the right not to admit his prior conviction and therefore, that he had the right not to incriminate himself. (*Id*. at p. 1180.) Unlike the

Howard defendant, Johnson was not advised of his confrontation rights. (Cf. *People v. Van Buren*, *supra*, 93 Cal.App.4th at p. 884 [reversing admission because of failure to advise of confrontation and self-incrimination rights; dual admonition failure is a "more significant" deficiency than the single failure in *Howard*].) Moreover, the nature of the proceedings was not communicated to Johnson in a manner that affirmatively establishes that he knew of his confrontation and self-incrimination rights and voluntarily and intelligently waived them.

Prior to Johnson's admission, his counsel said on the record, "[Y]ou have a right to have a trial on the priors today. I've looked at the documents, and it appears that it is sufficient to prove it, before the judge. But it is a personal right. So I need to have you tell the judge whether you want to proceed with sentencing and admit the priors, or whether you want to do a trial on the prior convictions at this point." The trial court told Johnson that if he chose a trial, "I'm going to look at the documents that your attorney has looked at and if I find that they establish that you are the person who was convicted and sent to prison on those three cases, then those priors will be found to be true." The court ensured only that Johnson understood that he had "a right for me [the court] to look at those [documents] and make that decision" and that the court "ha[d] to be convinced beyond a reasonable doubt that you are the person who suffered those convictions."

Unlike the colloquy preceding the admissions in *Howard*, *supra*, 1 Cal.4th at pages 1179-1180, the information given to Johnson here did not address the prosecution's responsibility to introduce evidence, allude to Johnson's ability to confront and examine witnesses, or suggest that the proceeding entailed the rights, procedures, and rules attendant to a trial. Johnson was offered two options: admit the prior convictions or the trial court would "examine" the documents Johnson's counsel said "appeared" to be "sufficient" to establish the prior convictions. We cannot conclude from this silent record that Johnson understood, and voluntarily and intelligently waived, his rights against self-incrimination and to confrontation. (*Garcia*, *supra*, 45 Cal.App.4th at p. 1248; *Torres*, *supra*, 43 Cal.App.4th at pp. 1080-1082; *Carroll*, *supra*, 47 Cal.App.4th at pp. 896-898; *Van Buren*, *supra*, 93 Cal.App.4th at pp. 883-884.)

Because the record does not affirmatively demonstrate that Johnson's admissions were knowing and intelligent, we must reverse the true findings on the section 667.5, subdivision (b) enhancements and remand for further proceedings on the prior prison term allegations. (*Garcia*, *supra*, 45 Cal.App.4th at p. 1248; *Torres*, *supra*, 43 Cal.App.4th at pp. 1080-1082; *Carroll*, *supra*, 47 Cal.App.4th at pp. 896-898; *Van Buren*, *supra*, 93 Cal.App.4th at pp. 883-884.)

III. Assault with a Deadly Weapon and Section 654

Section 654 bars punishment under multiple statutory provisions when a defendant engages in an indivisible course of conduct involving a single criminal objective. (*Neal v. California* (1960) 55 Cal.2d 11, 19.) "The divisibility of a course of conduct depends upon the intent and objective of the defendant. If all the offenses are incidental to one objective, the defendant may be punished for any one of them, but not for more than one. On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, the trial court may impose punishment for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct." (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135 (*Liu*).)

Johnson asserts that the robbery and assault with a deadly weapon involved a single criminal transaction and a single intent such that his sentence for assault with a deadly weapon should have been stayed. The trial court rejected this argument but imposed a concurrent sentence for the assault. "The question whether the defendant entertained multiple criminal objectives is one of fact for the trial court, and its findings on this question will be upheld on appeal if there is any substantial evidence to support them." (*Liu*, *supra*, 46 Cal.App.4th at pp. 1135-1136.)

Here, substantial evidence supports the trial court's implicit ruling that the robbery and assault were not part of an indivisible course of conduct motivated by a single goal. Morales testified three times at trial that Johnson struck him *after* he had surrendered his

valuables and purchases. Morales testified, "[W]hen he hit me with the tire iron, I had already thrown the beer and the money." He also testified that when Johnson approached with the tire iron, he (Morales) first threw the beer, then the contents of his pocket—including his money—to the ground. Morales continued, "And that's when he hit me." Later, Morales testified, "I dropped the coffee. Then I threw the beer. When I was throwing the beer, I threw the money. [¶] . . . [¶] I threw the things out, and that's when he hit me . . . ." Although Morales's testimony did at one point suggest that Johnson hit him as he threw the beer and money to the ground, Morales expressly stated three times that the blow occurred after he relinquished his possessions and also testified to a second strike with the tire iron after he had surrendered his possessions.

Contrary to Johnson's assertion, there is no "inherent contradiction" in the trial court's decision to stay Beasley's sentence for assault with a deadly weapon pursuant to section 654 but not to stay Johnson's sentence for violating the same provision of the Penal Code. Beasley's assault sentence was stayed because he assaulted Morales only as a means of accomplishing the robbery. In contrast, Johnson gratuitously struck Morales with the tire iron after Morales had surrendered his possessions in the robbery.

The trial court properly declined to stay the sentence for assault with a deadly weapon pursuant to section 654. (See *People v. Nguyen* (1988) 204 Cal.App.3d 181, 193 ["a separate act of violence against an unresisting victim or witness, whether gratuitous or to facilitate escape or to avoid prosecution, may be found not incidental to robbery for purposes of section 654. If the trier of fact determines the crimes have different intents and motives, multiple punishments are appropriate"]; *People v. Coleman* (1989) 48 Cal.3d 112, 162-163 [assault not incidental to robbery when it is committed after the robbery is complete and can be attributed to separate objective]; *In re Chapman* (1954) 43 Cal.2d 385, 390 [assault and robbery separately punishable when robbery complete before assault]; *People v. Cleveland* (2001) 87 Cal.App.4th 263, 271-272 [when force used far exceeds that required to accomplish robbery, attempted murder not incidental to robbery]; *People v. Sandoval* (1994) 30 Cal.App.4th 1288, 1299-1300 [gratuitous violent act after attempted robbery has been completed is not incidental to attempted robbery].)

DISPOSITION

The judgment of conviction is affirmed. The finding that appellant served three prior separate prison terms is reversed and the matter is remanded for further proceedings with respect to the allegations under Penal Code section 667.5, subdivision (b).

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

I concur:

ARMSTRONG, J.

Acting P. J. GRIGNON, Concurring and Dissenting.

I concur in that portion of the majority opinion affirming the judgment of conviction and concluding defendant's sentence need not be stayed pursuant to Penal Code section 654. I dissent from that portion of the majority opinion reversing the true findings on the prior prison term allegations.

The information alleged that defendant had suffered four prior prison terms within the meaning of Penal Code section 667.5, subdivision (b), to wit: a 1995 assault (Pen. Code, § 245, subd. (a)(1)); a 1995 drug possession (Health & Saf. Code, § 11350, subd. (a)); a 1996 drug possession (Health & Saf. Code, § 11350, subd. (a)); and a 1998 theft (Pen. Code, § 487, subd. (a)). The information advised defendant he could be sentenced to an additional one year for each prior prison term. Defendant denied the allegations and the trial on the prior prison term allegations was bifurcated from the trial on the underlying charges. The underlying charges proceeded to jury trial. Defendant exercised his privilege against self-incrimination and did not testify at the jury trial of the underlying charges. After the jury began deliberations on the underlying charges, defendant waived his right to a jury trial on the prior prison term allegations. After the jury found defendant guilty of the underlying charges, the matter was scheduled for a court trial on the prior prison term allegations.

At the commencement of the court trial, defense counsel advised the trial court she had reviewed the prosecution's documentary evidence on the prior prison term allegations. Defense counsel noted that, although there had been four prior convictions, those four convictions had resulted in only three separate prison terms. The two 1995 convictions had resulted in only a single prison term. The prosecution agreed. The trial court asked defense counsel whether defendant wanted a court trial or was prepared to admit the allegations. Defense counsel and defendant conferred. The following then occurred.

"[Defense counsel]: [Defendant] you have a right to have a trial on the priors today. I've looked at the documents, and it appears that it is sufficient to prove it, before the judge. But it is a personal right. So I need to have you tell the judge whether you want to proceed

with sentencing and admit the priors, or whether you want to do a trial on the prior convictions at this point.

"The Court: So you know the trial -- I'm going to look at the documents that your attorney has looked at and if I find that they establish that you are the person who was convicted and sent to prison on those three cases, then those priors will be found to be true. Do you understand?

"The Defendant: Yes, Ma'am.

". . . . . .

"The Court: Do you want me to look at it, or do you want to admit?

"The Defendant: I'll admit.

"The Court: Well, I could take your admission of the prior conviction, but I need to make sure that you understand that you do have a right to have a court trial since you've already waived your right to a jury trial. We talked about that when the trial was ongoing. And you understand your right for me to look at those and make that decision?

"The Defendant: Yes.

"The Court: And I have to be convinced beyond a reasonable doubt that you are the person who suffered those convictions. Do you understand that?

"The Defendant: Yes."

The trial court took the admissions to the four convictions alleged in the information and three separate prison commitments, finding three prior prison term allegations to be true. The trial court found the admissions to be knowing, intelligent, and freely given. Defendant was sentenced to three years for these enhancements.

Defendant contends his admission of the prior prison term allegations was neither voluntary nor intelligent because, although advised of his right to a jury trial and court trial, he was never expressly advised of his right to confront and cross-examine witnesses and his privilege against self-incrimination. I would conclude that an examination of the entire record establishes that defendant's admission of the three prior prison terms was voluntary and intelligent.

This issue is solely an issue of state law. None of defendant's federal constitutional rights are implicated in a bifurcated trial on prior prison term allegations. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *People v. Thomas* (2001) 91 Cal.App.4th 212, 215.) Before a prior prison term admission is received, the defendant must be advised of the statutory rights to a jury trial, against self-incrimination, and to confrontation. (*In re Yurko* (1974) 10 Cal.3d 857, 863-864; see 6 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Criminal Trial, § 453, pp. 648-651.) However, the absence of an express waiver of the statutory rights does not render a defendant's admission of a prior conviction less than voluntary and intelligent. (*People v. Howard* (1992) 1 Cal.4th 1132, 1180.) The appellate court looks to the entire record to determine if an admission is voluntary and intelligent under the totality of the circumstances. (*Id*. at pp. 1175, 1178.) A showing of a reasonable probability of a different result must be made before reversal is in order. (Cal. Const., art. VI, § 13; *People v. Epps* (2001) 25 Cal.4th 19, 29; 6 Witkin & Epstein, Cal. Criminal Law, *supra*, Reversible Error, § 7, p. 451.)

It is true that the trial court in this case did not expressly advise defendant, nor obtain express waivers, of his statutory rights against self-incrimination and to confront and cross-examine the witnesses against him. However, it is apparent from the totality of circumstances contained in the record that defendant's admission was voluntary and intelligent. Defendant was advised of and expressly waived his statutory right to a jury trial. Defendant was advised of and expressly waived his statutory right to a court trial. The colloquy between defense counsel, the trial court, and defendant also advised defendant that, at the trial on the prior prison term allegations, the prosecution would submit documentary evidence tending to prove that defendant had suffered three prior prison terms. The colloquy further advised defendant that the trial court would review the documentary evidence proffered by the prosecution and determine whether it was convinced beyond a reasonable doubt that defendant was the individual who had committed the prior convictions. Defense counsel advised defendant she had reviewed the documents and the evidence appeared sufficient to establish the allegations to be true. Defense counsel impliedly told defendant she had no further challenges to the prosecution's evidence, nor any defense evidence to present. The informal proceedings clearly

informed defendant of the nature of the trial he was waiving and emphasized his absolute personal right to demand a trial. (Compare *People v. Garcia* (1996) 45 Cal.App.4th 1242, 1247-1248 [no explanation given as to what would occur at the trial].) Thus, defendant was effectively advised that he had a right against self-incrimination and was not required to admit the prior prison term allegations but could require the prosecution to prove their truth by the presentation of evidence. Defendant was also effectively advised that he had a right to confront the evidence against him.

In addition, defendant had just participated in the trial of the underlying charges in which the prosecution had presented defendant's accusers, defense counsel had cross-examined the witnesses, and defendant had exercised his privilege against self-incrimination, both by pleading not guilty and by not testifying. Moreover, defendant was no stranger to the criminal justice system and was well aware of all of his rights. The record reflects that defendant was aware of and waived the right against self-incrimination and the right to confront and cross-examine the witnesses against him, both of which rights are encompassed in the right to a trial, which defendant expressly waived.[3] In addition, nothing in the record suggests that there is any dispute about the factual basis of the prior prison term allegations. I would conclude that defendant's admissions of the three prior prison term allegations was intelligent and voluntary, and any failure to expressly advise defendant of the rights against self-incrimination and to confront and cross-examine the witnesses against him was not prejudicial. There is no reasonable probability that defendant would not have admitted the priors had additional admonitions been given.

GRIGNON, Acting P. J.

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[3] This issue is pending before the California Supreme Court. (*People v. Mosby* (2002) 95 Cal.App.4th 967, review granted May 1, 2002, S104862.)