

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMIE LEE OATES,

Defendant and Appellant.

E029354

(Super.Ct.No. FWV 018708)

**ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]
AND DENIAL OF PETITION
FOR REHEARING**

Plaintiff and Respondent's petition for rehearing is denied. The opinion filed in this matter on August 31, 2004, is modified as follows:

1. On page 12, the heading "6. Personal Gun Use Enhancement" is changed to read "6. Personal Gun Use Penalty."
2. On page 12, line 3 should read "erred in imposing the criminal street gang penalty under section 186.22,"
3. On page 12, lines 11 and 12 should read "penalties, but not because of an insufficiency of evidence. Rather the People argue the section 186.22 penalties fail because the jury did not return any finding that"
4. On page 12, line 16 should read "discharged the gun. Therefore the section 186.22 penalties must be dismissed."

5. On page 12, line 19 should read “section 186.22, subdivision (b)(4) penalty must be stricken as to each count.”
6. On page 19, lines 1 through 6 should read “enhancement under section 654 and alternatively impose a subdivision (c) enhancement. Upon imposing the subdivision (d) enhancements, the trial court must strike, rather than stay all other section 12022.53 enhancements, such as the subdivisions (b) and (c) enhancements under section 12022.53, subdivision (f). We remand this case for resentencing to allow the trial court to exercise its discretion in determining whether to impose concurrent or consecutive sentences as to counts 3, 4, 5, and 6.”
7. On page 19, line 13 should read “criminal street gang penalty as to counts 1 through 6. The court is directed to”

Except for these modifications, the opinion remains unchanged. This modification does not effect a change in the judgment.

CERTIFIED FOR PUBLICATION

s/Gaut
J.

We concur:

s/McKinster
P. J.

s/Ward
J.