

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

----

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
ANTONIO DWAYNE MITCHELL,  
  
Defendant and Appellant.

C061560  
  
(Super. Ct. No.  
SF102633B)  
  
ORDER MODIFYING  
OPINION  
[NO CHANGE IN  
JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 26, 2011, be modified as follows:

The last paragraph that begins on page 9 and continues on page 10 is omitted and replaced with the following paragraph:

The Attorney General does not dispute that the trial court exceeded its jurisdiction when it imposed the enhanced sentence for first degree robbery in concert, an enhancement defendant never committed and which was never alleged against or admitted by him. Rather, the Attorney General claims it does not matter in this context, because defendant is estopped from challenging

the sentencing error. He simply agreed to the specific sentence as part of the plea bargain very much to his benefit. We disagree and conclude the rule of estoppel relied upon by the Attorney General does not apply in this instance.

This modification does not change the judgment.

THE COURT:

\_\_\_\_\_  
RAYE, P. J.

\_\_\_\_\_  
BLEASE, J.

\_\_\_\_\_  
NICHOLSON, J.