

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(El Dorado)

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
SILVESTRE GARCIA GONZALEZ et al.,  
  
Defendants and Appellants.

C045935

(Super. Ct. No.  
P00CRF0406)

ORDER MODIFYING  
DISSENTING OPINION

THE COURT:

It is ordered that the opinion filed herein on August 29, 2006, be modified as follows:

On page 8 of the dissenting opinion, after the first sentence of the first paragraph ending "reversed on appeal," add the following cite:

(Maj. opn., *ante*, at p. 16.)

On page 8 of the dissenting opinion, in between the first and second paragraph, insert the following:

To be fair to Judge Keller, there is a rule of court that supports what he did here. Rule 4.447 of the California Rules of Court provides as follows:  
"No finding of an enhancement shall be stricken or dismissed because imposition of the term is either

prohibited by law or exceeds limitations on the imposition of multiple enhancements. The sentencing judge shall impose sentence for the aggregate term of imprisonment computed without reference to those prohibitions and limitations, and shall thereupon stay execution of so much of the term as is prohibited or exceeds the applicable limit. The stay shall become permanent upon the defendant's service of the portion of the sentence not stayed."

Rule 4.447 tells trial courts to do exactly what Judge Keller did -- impose sentence for an aggregate term of imprisonment, including any and all enhancements, *without regard to* any law prohibiting the imposition of one or more of those enhancements, then simply "stay execution of so much of the term as is prohibited or exceeds the applicable limit."

In my view, however, rule 4.447 is invalid -- at least as applied to firearm enhancements under sections 12022.5 and 12022.53. As I have explained, section 12022.53(f) expressly prohibits the imposition of multiple sentence enhancements under section 12022.53 for any given crime; it also prohibits the imposition of a firearm enhancement under section 12022.5 in conjunction with the imposition of an enhancement under section 12022.53. Where the Legislature has commanded that certain enhancements *shall not be imposed*, the Judicial Council has no

authority to allow or require action to the contrary.  
(See *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 532  
[“Rules promulgated by the Judicial Council may not  
conflict with governing statutes”].)

BY THE COURT:

ROBIE \_\_\_\_\_, J.