

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL DEJESUS CAMPOS,

Defendant and Appellant.

A132076

(Mendocino County

Super. Ct. No. SCUKCRCR 11 16117)

Samuel Dejesus Campos pleaded guilty to voluntary manslaughter and admitted an enhancement for personal use of a firearm arising from the shooting death of his girlfriend. He appeals from his sentence of 15 years in state prison, contending the transcript of the sentencing hearing shows the trial court intended to sentence defendant to the three-year mitigated term for the enhancement, rather than the four-year midterm sentence reflected in the clerk's minute order and abstract of judgment. We find no discrepancy or ambiguity in the record, and affirm the judgment.

I. BACKGROUND

Defendant was charged by complaint with murder. (Pen. Code,¹ § 187, subd. (a).) The complaint further alleged that defendant personally discharged a firearm and caused great bodily injury. (§ 12022.7.) Pursuant to a negotiated disposition, the complaint was amended to allege in count two that defendant committed voluntary manslaughter, and to add an allegation that he personally used a firearm in the commission of a felony within

¹ All statutory references are to the Penal Code.

the meaning of section 12022.5, subdivision (a). Under an open plea, defendant pleaded guilty to voluntary manslaughter (§ 192, subd. (a)) and admitted an enhancement for personal use of a firearm (§ 12022.5, subd. (a)). Defendant's plea exposed him to a range of sentences from 6 to 21 years in state prison (3, 6, or 11 years for manslaughter, and 3, 4, or 10 years for the gun enhancement). The district attorney's office advised defendant before his plea that it would seek the maximum, 21-year sentence.

The trial court sentenced defendant on May 13, 2011. The clerk's minute order and abstract of judgment reflect that the trial court sentenced defendant to the aggravated term of 11 years for manslaughter, and a consecutive middle term of 4 years for the gun enhancement, for a total of 15 years in state prison. The parties dispute whether the reporter's transcript of the sentencing hearing reflects the same sentence or indicates the trial court may have intended to sentence defendant to the three-year mitigated term for the gun enhancement. Defendant timely appealed from the judgment.

Facts²

On January 3, 2011 at approximately 11:15 p.m., the sheriff's office received information that defendant had shot and killed his girlfriend, Josie, and wished to turn himself in. Defendant later arrived at the sheriff's office, was detained, and gave a statement to a sheriff's detective.

Defendant and Josie Navarro returned to Willits from a car trip to Los Angeles at approximately 8:00 p.m. on January 3, 2011. Once at home, defendant began consuming alcoholic beverages and smoking marijuana cigarettes. Defendant was angry about being stopped by law enforcement on the way home and receiving a citation. Josie was also complaining about her dog's broken leg which, according to defendant, came about while in Los Angeles when he threw the Chihuahua to his niece who missed catching the dog. Defendant stated Josie and the rest of the family members blamed him for the dog's broken leg and were very upset with him.

² The facts are drawn from the probation report which summarizes the police report.

Defendant consumed more alcohol and he and Josie continued arguing about the dog. Defendant got angrier as they argued. Eventually he retrieved his silver nine-millimeter semi-automatic handgun from a closet. He loaded it and held it out the door, firing four shots in the air, hoping the shooting would relieve his anger. After that, he loaded the weapon with four more cartridges and placed it back in his jacket pocket.

Defendant stated he approached Josie as she was getting ready for bed in order to touch her. As he did so, he accidentally bumped into the dog, which started to yelp. Josie jumped up in the bed and slapped him. Defendant said he told Josie he was tired of arguing about the dog and was going to shoot it. He retrieved his handgun and approached Josie to shoot the dog, which Josie had tucked under her right arm against her body. Defendant stated he put the firearm to the dog's head and fired the weapon. He did not observe the reaction he was expecting and assumed he had missed, so he fired again. The second shot struck Josie on the right side of her chest. Defendant lifted her shirt and observed a hole in her chest, but stated he saw no blood. Josie pleaded with him to take her to the hospital because she was shot. The dog was crying and yelping due to the injuries from the first gunshot so he removed the dog from the bed and placed it in a dog crate.

Defendant stated he panicked, did not know what to do, and put the firearm to his temple with the thought of killing himself. Josie pleaded with him not to shoot himself and to transport her to the hospital. Defendant carried Josie to their vehicle and laid her across the back seat. The dog continued to yelp and cry so defendant left Josie in the vehicle and returned to the residence, cleaned up, and placed the dog underneath the trailer in the crate. Defendant said he panicked and did not know why he did not call for an ambulance or take Josie straight to the hospital.

Defendant told the detective that when he returned to the vehicle, Josie was cold, did not appear to be breathing, and was unresponsive when he shook her and tried to talk to her. He called his brother, Martin Ramirez, and told him what happened and that he thought Josie was dead. Ramirez told him to take Josie back into the residence and get help in the morning since he was so intoxicated. Defendant carried Josie back into the

residence, laid her on the bed, and covered her with blankets. He planned to lie down next to her and take his own life but could not do it.

Deputies went to the residence, and found the dog outside of the trailer in a dog carrier with an injury to his snout. Josie was found inside covered in blankets on a double-sized bed in a bedroom. She had a single bullet wound on the bottom of her right breast. Gunshot stippling was present, indicating a close contact gunshot. Josie had no other injuries.

II. DISCUSSION

After hearing from the witnesses and counsel at the sentencing hearing, the court first explained the circumstances in mitigation and aggravation that led it to impose the aggravated sentence of 11 years for voluntary manslaughter.³ The dispute in this case centers on the following colloquy, which began immediately after the court had pronounced sentence on the manslaughter offense:

“[THE COURT:] On the second special allegation which is the personal use of a firearm, . . . *I am going to sentence him to the mitigated term of four years.* And the reason for that is there’s no history of gun use in [defendant’s] past. And I don’t think—I mean, he used the gun to shoot her. There was not any other excessive use of the gun that evening. *And so I will, as I say, I will sentence . . . him to the midterm of two years for a total of 15 years.* [¶] [Defendant] will be given credit for 124 days—

“PROBATION OFFICER: Your Honor—

“[DEFENDANT’S COUNSEL]: It’s a four-year mitigated. You said two, your Honor. You came up with the right total.

³ Mitigating circumstances included defendant’s minimal criminal history, his early confession to the crime, and his possible intoxication, if his statements on that subject could be believed. The court viewed these as being outweighed by the aggravating circumstances that (1) defendant was solely responsible for the entire series of decisions that led to Josie’s death; (2) his attempt to kill the dog while Josie was holding it manifested extreme callousness toward the risk to Josie; and (3) defendant failed to get Josie to the hospital despite the fact that she was conscious enough to be able to ask him to do so and, by his account, to dissuade him from shooting himself.

“THE COURT: *Four years.* Term of 11 years on Count 2. *The midterm of four years for a total of 15 years.*” (Italics added.)

Immediately following this pronouncement of sentence, the probation officer stated defendant’s custody credits, and the court ordered those credits to be given, imposed a restitution fine, advised defendant of his appeal rights, and recessed the hearing.

Defendant contends the record reflects the trial court’s intention to impose the three-year mitigated term for the gun use enhancement, and the sentence should therefore be modified accordingly. In the alternative, assuming the record is ambiguous as to the court’s intention, defendant asks that we remand for a resentencing hearing. We find the record is clear. The court intended to impose a 15-year prison sentence, consisting of an aggravated 11-year manslaughter sentence and a 4-year, midterm enhancement for gun use.

There is no dispute the court imposed the aggravated term of 11 years for defendant’s manslaughter conviction. At no point after it turned to the question of the sentence for the enhancement did the court ever suggest it would be imposing anything other than a 15-year aggregate sentence on defendant. It stated once and then repeated a second time before moving on to custody credits and restitution that it would be imposing an aggregate sentence of 15 years. Although the court misspoke at first—when it designated the 4-year sentence it was imposing as the “mitigated” term and when it stated it was imposing the “midterm of two years” for a total of 15 years—those misstatements are immaterial here. After defense counsel interjected to correct the court’s misstatement, the court clarified that its intent was to impose a 4-year *midterm* sentence and a 15-year aggregate term. That was its pronouncement of sentence. At no point in the proceedings did the court ever state it intended to impose a 3-year term for the gun enhancement, or anything less than a 15-year aggregate sentence.

It is true the court stated as reasons for the four-year term the fact that defendant had no history of gun use and had not misused the gun on the evening of the offense before the fatal shooting. However, section 1170, subdivision (b) only required the court

to state reasons for the term selected; it did not require a weighing of aggravating and mitigating circumstances. Viewed in context, the court's comments about the 4-year term in this case can only be construed as responses to the arguments of the prosecutor and the probation officer, both of whom recommended a 10-year aggravated term for the gun enhancement.⁴ It is clear from the entire record of the proceedings that the court was explaining its reasons for rejecting the aggravated term, not explaining why it was choosing a mitigated term.

The court was consistent in stating its intent to impose a total term of 15 years, which could only have been accomplished by imposing the aggravated term for voluntary manslaughter and the 4-year midterm for the gun enhancement. We find no discrepancy warranting either modification of the judgment or remand between the court's oral pronouncement of judgment, and the minute order and abstract of judgment.

III. DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Marchiano, P.J.

Dondero, J.

⁴ The prosecution argued in aggravation that defendant exhibited a course of conduct of shooting and reloading his gun that evening, and that he used the gun close up to the victim rather than shooting her from across the room.