

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARICO MARCELL ALLEN,

Defendant and Appellant.

A137399

**(Solano County
Super. Ct. No. FCR295072)**

Appellant Marico Marcell Allen pled no contest to one count of second degree robbery (Pen. Code, § 211)¹ with an enhancement for personal use of a firearm (§ 12022.5, subd. (a)). Appellant was sentenced to six years in state prison. Appellant’s counsel has raised no issue on appeal and asks this court for an independent review of the record to determine whether there are any arguable issues. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) Appellant has not filed a supplementary brief. We find no arguable issues. We direct the trial court to correct a clerical error in the abstract of judgment, and otherwise affirm.

BACKGROUND

In July 2012, appellant was charged by felony complaint with four counts arising out of an incident in which appellant robbed a convenience store at gunpoint. According

¹ All further statutory references are to the Penal Code.

to the probation report, appellant pointed a loaded gun at the store clerk and took approximately \$200 from the register. He was apprehended shortly after the incident and promptly confessed.

In November 2012, appellant entered a plea of no contest to second degree robbery (§ 211) with an enhancement for personal use of a firearm (§ 12022.5, subd. (a)). In accordance with the plea agreement, the remaining counts were dismissed and an additional enhancement allegation was stricken.²

The plea agreement provided that the maximum sentence would be eight years in state prison and that appellant could argue for a lesser prison sentence. At the sentencing hearing, appellant urged the court to impose the low term for both the robbery and the firearms enhancement, for a total sentence of five years. The People argued for the middle term for both the robbery and the firearms enhancement, for a total sentence of seven years.

The trial court found that appellant was not eligible for probation. (§ 1203.06, subd. (a)(1)(B).) The court imposed the low term of two years on the robbery, finding “the mitigating factors as to the robbery itself do predominate You have a limited record. You were very remorseful.” The trial court imposed the middle term of four years on the firearms enhancement, finding that “[p]ointing directly at a victim with a loaded firearm is not a low term use.”

DISCUSSION

We have reviewed the entire record and have found no arguable appellate issues. Appellate counsel advised appellant of his right to file a supplementary brief to bring to this court’s attention any issue he believes deserves review. (*People v. Kelly* (2006) 40 Cal.4th 106.) Appellant did not file a supplementary brief. There are no legal issues that require further briefing.

Appellant was adequately represented by legal counsel throughout the proceedings. Appellant freely and voluntarily entered a no contest plea. The trial court’s

² We note, although the November 1, 2012 transcript is clear counts 2, 3 and 4 were dismissed, the minute order reflects only the dismissal of counts 2 and 3.

sentence did not exceed the maximum sentence provided for in the plea agreement. The trial court correctly found appellant was not eligible for probation. The trial court considered the factors in aggravation and mitigation and stated its reasons for the sentence imposed. The sentence was not an abuse of discretion. The credits awarded and restitution fines imposed by the court were proper.

However, due to an apparent clerical error, the abstract of judgment imposes a \$1,500 restitution fine “per [section] 1202.44 [that] is now due, probation having been revoked.” As the transcript of the sentencing hearing makes clear, the trial court in fact ordered a “[section] 1202.45 fine of \$1,500, which is only imposed if parole is revoked.”

DISPOSITION

The judgment is affirmed. The trial court is ordered to prepare and forward to the California Department of Corrections and Rehabilitation an amended abstract of judgment indicating imposition of the \$1,500 fine pursuant to section 1202.45 instead of section 1202.44.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.