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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MONICA VASQUEZ et al.,

Defendants and Appellants.

2d Crim. No. B232587
(Super. Ct. No. KA084318)
(Los Angeles County)

In a November 17, 2010, unpublished opinion (Case No. B213536), we affirmed the convictions of appellants Monica Vasquez, Patrick Delgado, and Joseph Adame for second degree robbery (Pen. Code, § 211)¹, kidnapping to commit robbery (§ 209, subd. (b)(1)), dissuading a witness (§ 136.1, subd. (c)(1)), and carjacking (§ 215, subd. (a)).² We remanded for resentencing, however, as to Vasquez and Delgado. Vasquez and Delgado filed notices of appeal from the judgment entered following their resentencing. Vasquez filed a brief contending that her sentence on remand constituted cruel and unusual punishment. Counsel for Delgado filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v.*

¹ All statutory references are to the Penal Code unless otherwise stated.

² A jury finding that each of them committed the crimes for the benefit of a criminal street gang was also affirmed. (§ 186.22, subds. (b)(1)(C) & (b)(4).)

Wende (1979) 25 Cal.3d 436. We affirm the judgments entered after resentencing as to both Vasquez and Delgado.

FACTS AND PROCEDURAL HISTORY

Between 12:00 a.m. and 2:00 a.m. on August 27, 2008, Guillermo Tagalogon arrived at an apartment complex in an area of Pomona controlled by the 12th Street gang. Delgado and Joseph Adame approached Tagalogon and asked what he was doing there. They were by several other people including Vasquez.

After Vasquez accused Tagalogon of being a member of a rival gang, the Cherryville gang, Tagalogon was forced to hand over his car keys. Vasquez hit Tagalogon several times, and several members of the group took items of Tagalogon's personal property. Tagalogon was blindfolded and ordered into the back of his car. Adame, Delgado and Vasquez got into the car and drove away with Tagalogon. They dropped Tagalogon off at a freeway exit ramp and continued on in Tagalogon's car. Tagalogon walked home and his wife called the police.

Pomona police officers stopped Tagalogon's car at about 4:00 a.m. Adame was driving and Delgado was in the front passenger seat. Vasquez was not in the car. Tagalogon identified Adame and Delgado in a police in-field showup, and later identified Vasquez from a photograph.

At trial, there was incriminating evidence from a recorded jailhouse telephone call by Vasquez to her boyfriend, as well as Tagalogon's testimony. A prosecution gang expert also testified that, based on a hypothetical identical to the facts of the case, that the charged offenses were committed to promote and benefit the 12th Street gang.

After the jury entered guilty verdicts, the trial court sentenced Adame to 52 years to life in state prison, Delgado to 37 years to life, and Vasquez to 30 years to life. Vasquez's sentence consisted of consecutive 15 years to life sentences for the kidnapping and carjacking as well as concurrent sentences for the robbery, dissuading a witness and gang enhancements associated with those offenses.

Both Vasquez and Delgado appealed the judgment raising various issues. We rejected most of their contentions but agreed that the trial court violated the section 654 ban on multiple punishment by sentencing them for both robbery and kidnapping for robbery. We concluded that the trial court was required to stay the sentences on the robbery because the jury's verdicts were plainly based on the prosecution's stated theory that the kidnapping was committed for the purpose of completing a robbery that was already underway. We remanded for resentencing to correct the error.

Our November 17, 2010, opinion stated: "Ordinarily, we would simply order all three robbery sentences stayed and that would be the end of the matter. Delgado persuasively argues, however, that the court should be given the opportunity to resentence him on the remaining counts because merely staying his robbery term would effectively render his sentence identical to Adame's, i.e., an aggregate indeterminate term of 37 years to life, a result the court plainly did not intend. In ordering Adame's robbery term to run consecutive to the indeterminate terms, the court noted that he was the 'dominant participant' in the crimes. As to Delgado, the court imposed a concurrent term for the robbery to account for his lesser role and noted the 'relative absence[] of criminal activity [in his] background.' In a similar vein, the court imposed a concurrent term on the robbery count as to Vasquez and ordered her sentence on the section 136.1 count to run concurrent to the other indeterminate terms, thereby reflecting a determination that Vasquez was worthy of less punishment than both of her codefendants. [¶] Because the staying of the robbery convictions effectively eliminates the court's discretionary decision to subject Delgado to a lesser term than Adame, we remand the matter for resentencing as to Delgado. The court's exercise of its discretion on remand as to Delgado could also undermine its discretionary goal of sentencing Vasquez to a lesser term, so the matter is remanded as to her as well."

On April 19, 2011, the trial court conducted a resentencing hearing after remand. After hearing argument, the trial court resentedenced Delgado to an aggregate term of 30 years to life and Vasquez to an aggregate term of 22 years to life.

DISCUSSION

Vasquez Appeal

Vasquez contends that her sentence of 22 years to life constitutes cruel and unusual punishment. In the first appeal, Vasquez made a virtually identical argument that her original 30 years to life sentence constituted cruel and unusual punishment. In our prior opinion affirming the judgment, we considered the argument in depth and concluded that, based on all the relevant factors, the 30 years to life sentence was not cruel or unusual. Our analysis and decision is dispositive as to a lesser sentence of 22 years to life. Vasquez is precluded from relitigating the same issues addressed in the previous appeal which were disposed of in our opinion in case No. B213536. (See *People v. Wycoff* (2008) 164 Cal.App.4th 410, 415.)

Delgado Appeal

We appointed counsel to represent Delgado and, as stated above, after examination of the record, counsel filed an opening brief in which no issues were raised. On November 29, 2011, we advised Delgado that he had 30 days within which to personally submit any contentions or issues he wished to raise on appeal. We have not received a response from him. We have reviewed the entire record and are satisfied that Delgado's attorney has fully complied with her responsibilities and that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 443; *People v. Kelly* (2006) 40 Cal.4th 106, 126.)

DISPOSITION

The judgments are affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Bruce F. Marrs, Judge
Superior Court County of Los Angeles

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Appellant Vasquez.

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