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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.

LUIS ENRIQUE MIRANDA,

Defendant and Appellant.

2d Crim. No. B236607
(Super. Ct. No. BA368429)
(Los Angeles County)

Luis Enrique Miranda appeals from the postjudgment order denying his motion to correct the six-year state prison sentence that was imposed after a jury convicted him of being a felon in possession of a firearm (Pen. Code, former § 12021, subd. (a)(1), now § 29800).¹ Following his conviction, appellant admitted that he had suffered a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and served a prior prison term (§ 667.5, subd. (b)). The trial court arrived at the six-year sentence by imposing the upper term of three years and doubling it for the strike prior.

We previously affirmed appellant's conviction in an unpublished opinion. (*People v. Miranda* (Jan. 19, 2012, B227864).)² While that appeal was pending,

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

² The relevant facts were summarized in the opinion as follows: "On February 25, 2010, Los Angeles Police Officers Joel Ruiz and K. Fuentes were among 23 officers who executed a search warrant at 1345 East 28th Street in Los Angeles. The property at the address is a house that is subdivided into two residences. The arrest report submitted by

appellant filed the postjudgment motion that is the subject of this appeal. In denying the motion, the trial court explained it had "clearly intended to sentence [appellant] to a total of six years" and simply "misspoke" when it stated it was imposing "the *midterm* of three years doubled under the Three Strikes law." (Italics added.)³

We appointed counsel to represent appellant in this appeal. After examining the record, appointed counsel filed an opening brief raising no issues and requesting that we independently examine the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

We subsequently advised appellant that he had 30 days within which to personally submit any contentions or issues he wished to raise on appeal. Appellant filed a timely response in which he claims (1) the court erred in admitting the booking photographs of two other individuals who were charged with selling drugs out of the residence where he was arrested; (2) the prosecution failed to produce photographs of the window Officer Ruiz looked through when he saw appellant in possession a firearm; and (3) the court erred in denying the jury's request to review Officer Ruiz's preliminary

Officer Fuentes states that the warrant was obtained after he and his partner had observed drugs being sold from the yard adjacent to the rear residence. Officer Michel approached the door to the front residence and announced the officers' intent to execute the warrant. After receiving no response, the officers forcibly entered the front residence and found a woman sitting on a couch with her two children. In the meantime, Officer Ruiz walked to the rear residence, looked through an open window, and saw appellant standing in the living room. Appellant reached into his waistband, and Officer Ruiz told him to show his hands. At that point, appellant removed a handgun from his waistband and tossed it onto a table. Officer Ruiz also saw another man toss a handgun into a pile of clothing. Shortly thereafter, Officers Flores and Garcia entered the rear residence and took appellant and several other individuals into custody. Both guns were recovered from the rear residence during execution of the search warrant along with narcotics and drug paraphernalia. It was stipulated that appellant had a prior felony conviction."

In appealing his conviction, appellant filed an opening brief asking us to independently review the record to determine whether the court abused its discretion in denying his *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531). He also contended the judgment should be corrected to reflect that the court had sentenced him to the midterm, as opposed to the upper term. He abandoned the latter claim, however, after the court denied his postjudgment motion to correct the sentence on the same grounds.

³ The midterm for a violation of former section 12021, subdivision (a)(1) is two years.

hearing testimony on the ground that it was not admitted into evidence. Appellant subsequently filed another supplemental brief in which he claims that his trial and appellate attorneys provided constitutionally ineffective assistance of counsel.⁴

None of appellant's proffered claims are cognizable here because they challenge his *conviction*, which is not the subject of this appeal. In any event, appellant fails to identify any issues that would otherwise entitle him to relief. He demonstrates neither error nor prejudice in the admission of the booking photographs at issue, and he fails to demonstrate that the prosecution withheld other photographs. He also fails to establish the court erred in declining the jury's request to consider evidence that was not offered at trial.

Appellant's ineffective assistance claims fare no better. His claim that trial counsel failed to conduct an adequate investigation presumes the existence of facts that are not before the court. The record belies appellant's assertion that counsel failed to properly impeach Officer Ruiz with conflicting testimony he gave at the preliminary hearing and trial regarding the location of his partner when the incident occurred. Appellant also refers to an instance when the prosecutor was able to exploit defense counsel's error in trying to impeach Officer Ruiz with incorrect information regarding the number of law enforcement officers who were present that day. Appellant fails, however, to establish that he suffered prejudice as a result of this error, i.e., that it is reasonably probable he would have achieved a more favorable result had the error not occurred. (*Strickland v. Washington* (1984) 466 U.S. 668, 694.) Because appellant fails to demonstrate that his trial counsel provided ineffective assistance, his claim that appellate counsel rendered ineffective assistance by failing to so argue also necessarily fails.

⁴ On the court's own motion, we take judicial notice of the appellate record in the prior appeal, B227864. Because we have taken judicial notice of the entire record on appeal, appellant's request for judicial notice of the preliminary hearing transcript is denied as unnecessary. Appellant's request for judicial notice of a declaration he submitted in support of his second supplemental brief is also denied as unnecessary.

We have reviewed the record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 443.)

The postjudgment order denying appellant's motion to correct his sentence is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Dennis J. Landin, Judge
Superior Court County of Los Angeles

Suzann E. Papagoda, under appointment by the Court of Appeal; Luis Enrique Miranda, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.