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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR MENDEZ,

Defendant and Appellant.

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B237019

(Los Angeles County
Super. Ct. No. LA056790)

THE COURT:*

Victor Mendez (defendant) appeals from the judgment entered following remand for resentencing on his convictions for one count of carjacking (Pen. Code, § 215, subd. (a)),¹ one count of assault with a firearm (§ 245, subd. (a)(2)), seven counts of second degree robbery (§ 211), and true findings on criminal street gang and firearm allegations on each count (§§ 186.22, subd. (b)(1)(C); 12022, subd. (a)(1); 1203.06, subd. (a)(1); 12022.5, subd. (a); and 12022.53, subs. (b) & (e)(1)). We appointed counsel to represent defendant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that she had been unable to find any arguable issues. On May 2, 2012, we advised defendant that he had 30 days within

* BOREN, P. J., DOI TODD, J., CHAVEZ, J.

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

which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

In defendant's first appeal, this court concluded that his sentence of 84 years to life constituted cruel and unusual punishment and was therefore unconstitutional.² (*People v. Mendez* (2010) 188 Cal.App.4th 47, 50-51, 66.) At the resentencing hearing, the trial court stated it had read and studied the appellate opinion, the original probation report, and the transcript of the initial sentencing hearing. The trial court observed that this court believed defendant's sentence was grossly disproportionate to the crime committed and the offender and his age. The trial court noted that we found troubling the lack of information regarding defendant's personal and family life, his upbringing, possible drug use, mental health, and education, and the trial court asked defense counsel to present evidence on these issues on defendant's behalf. Defense counsel described, inter alia, defendant's absent father, lack of parental supervision, and the fact that defendant's older brother brought him into the gang when defendant was approximately 11 years old. Defendant had completed his GED while in custody. Defense counsel advocated a total sentence of 25 years to life.

² Defendant's original sentence was calculated as follows: "Count 1 (carjacking) 25 years to life (with a minimum eligibility for parole of 15 years plus 10 years for the § 12022.53, subd. (b) enhancement (personal use of firearm)); count 2 (robbery) four years four months (one-third the midterm of three years plus one-third of 10 years for the § 186.22 gang enhancement); counts 3 and 4 (robberies) four years four months each (one-third the midterm of three years plus one-third of 10 years for the § 12022.53, subds. (b) and (e)(1) enhancements (use of firearm by a principal)); count 6 (robbery), which the court chose as the principal determinate term, 23 years (three years plus 10 years for the § 186.22 enhancement and 10 years for the § 12022.53, subd. (b) enhancement); counts 7, 8, 9 (robberies) seven years eight months each (one-third the midterm of three years plus one-third of 10 years for the § 186.22 enhancements and one-third of 10 years for the § 12022.53, subd. (b) enhancements). The court imposed a concurrent sentence of eight years for count 5 (assault with a firearm) (three years plus five years for the § 186.22 enhancement). The court struck the enhancements on counts 3 and 4 for the section 186.22 and 12022, subdivision (a)(1) allegations, as well as the section 12022.53, subdivisions (b) and (e)(1) on counts 8 and 9." (*People v. Mendez, supra*, 188 Cal.App.4th at p. 62, fn. 8.)

The prosecutor argued that a sentence of “51 years actual” would mean that defendant was no longer receiving a de facto sentence of life without parole, given his age of 18 at sentencing and his life expectancy of 76 years. (See *People v. Mendez*, *supra*, 188 Cal.App.4th at pp. 62-63.) The prosecutor believed that a sentence of approximately 60 years would achieve this goal.

The trial court did not believe that this court wished it to merely shave 10 to 20 years off defendant’s sentence. The trial court stated it could resolve the issue by imposing many of the terms concurrently rather than consecutively. The trial court then imposed the midterm of three years for the robbery in count 6 (the principal term) with consecutive terms of 10 years each for the gang allegation (§ 186.22, subd. (b)(1)(C)) and the firearm allegation (§ 12022.53, subd. (b)) for a total of 23 years in that count. The trial court imposed a consecutive term of 15 years to life for the carjacking of a separate victim in count 1 plus a consecutive term of 10 years for personal use of a firearm (§ 12022.53, subd. (b)), staying the gang enhancement (§ 186.22, subd. (b)(1)(C)) for a total of 25 years to life in that count. The trial court imposed concurrent sentences in the remaining counts, resulting in a sentence of 48 years to life.

We have examined the entire record, and we are satisfied that appellant’s attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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