

Filed 2/10/15 P. v. Lopez CA2/5

Prior opinion using same docket number filed 1/12/15 for codefendant Garcia

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP LOPEZ,

Defendant and Appellant.

B251468

(Los Angeles County
Super. Ct. No. MA059386)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed with directions.

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

Defendant, Phillip Lopez, appeals after he pled no contest to firearm possession by a felon. (Pen. Code,¹ § 29800, subd. (a)(1).) Defendant admitted he had previously been convicted of a serious felony. (§§ 667, subds. (b)-(i), 1170.12.) The appropriate fines and penalties were imposed. Defendant was sentenced to prison for six years.

After being held to answer, defendant's section 1538.5 suppression of evidence motion was denied. The preliminary hearing testimony indicates Albert Garcia was driving eastbound on Avenue J in Lancaster when he was stopped by sheriff's deputies. Mr. Garcia had been swerving between and straddling lanes. The deputies asked Mr. Garcia to get out of the car. As Mr. Garcia was doing so, the deputies discovered a nine-millimeter handgun in Mr. Garcia's waistband. Defendant was a passenger in the car. Directly behind defendant's seat was a 12-gauge shotgun. Both firearms were operable.

We appointed counsel to represent defendant on appeal. After examining the record, appointed appellate counsel filed an "Opening Brief" in which no issues were raised. Instead, appointed appellate counsel requested that we independently review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284.) We advised defendant he had 30 days within which to personally submit any contentions or arguments he wished us to consider. No response has been received. We have examined the entire record and are satisfied appointed appellate counsel has fully complied with her responsibilities.

We asked appointed appellate counsel to brief the question whether the abstract of judgment must be corrected to comport with the oral pronouncement of judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471; *People v. Hartsell* (1973) 34 Cal.App.3d 8, 14.) The oral pronouncement of judgment imposed sections 1202.4, subdivision (b) and 1202.45 restitution fines in the sum of \$1,580. The abstract of judgment erroneously stated the restitution fines were in the sum of \$1,680. Appointed appellate counsel agrees

¹ Further statutory references are to the Penal Code.

that the abstract of judgment does not reflect the trial court's oral pronouncement and must be corrected.

The judgment is affirmed. Upon remittitur issuance, the clerk of the superior court is to amend the abstract of judgment to reflect restitution fines under sections 1202.4, subdivision (b) and 1202.45 in the sum of \$1,580, and deliver a copy to the Department of Corrections and Rehabilitation.

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TURNER, P.J.

We concur:

MOSK, J.

GOODMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.