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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT WILLIAM CAREY,

Defendant and Appellant.

C076086

(Super. Ct. No. 12F06027)

Appointed counsel for defendant Robert William Carey has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

In November 2013 defendant was charged by amended information with six counts of distribution of assault weapons (Pen. Code § 30600, subd. (a)—counts one, six, seven, twelve, fourteen, and fifteen),¹ five counts of manufacture of large-capacity magazines (§ 32310—counts two, five, eight, nine, and thirteen), three counts of unlawfully changing and obliterating the name of the maker of semiautomatic rifles (§ 23900—counts three, ten, and eleven), and one count of sale of a semiautomatic rifle without a firearms dealer’s license (§ 27545—count four).

Represented by retained counsel, defendant pleaded no contest to counts one, five, six, eight, and ten in exchange for a stipulated aggregate sentence of 12 years in prison, the entire duration to be served in county jail, and dismissal of the balance of the charges against him. The factual basis to substantiate his plea is as follows:

On July 3, 2012, defendant manufactured and sold a semiautomatic assault rifle with a pistol grip and telescoping stock (for use with .223-caliber or 5.56 x 45-millimeter bullets) (hereafter, .223-caliber assault rifle) to an undercover agent of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (undercover ATF agent) in violation of section 30600, subdivision (a) (count one).

On July 13, 2012, defendant sold a large-capacity magazine to an undercover ATF agent in violation of section 32310 (count five).

On July 16, 2012, defendant manufactured and sold a nine-millimeter semiautomatic rifle with a telescoping stock, pistol grip, and seven- to eight-inch barrel to an undercover ATF agent in violation of section 30600, subdivision (a) (count six). That same day, defendant sold a large-capacity magazine (separate from the weapon sold in count six) to an undercover ATF agent in violation of section 32310 (count eight).

¹ Undesignated statutory references are to the Penal Code in effect at the time of defendant’s 2012 crimes.

Defendant also removed the model, maker, and manufacturer's number and other marking identification from the nine-millimeter semiautomatic rifle described in count six in violation of section 23900 (count ten).

The trial court denied probation and sentenced defendant to 12 years in prison, to be served locally pursuant to section 1170, subdivision (h)(5)(B), as a nine/three "split" term, with nine years served in county jail and the remaining three years suspended under mandatory supervision (as opposed to the six/six split recommended in the probation report). The court also imposed relevant fees and fines, including a \$2,400 restitution fine and a \$2,400 mandatory supervision revocation restitution fine (stayed pending successful completion of mandatory supervision), and awarded defendant one day of presentence custody credit.

Defendant filed a timely notice of appeal. At the request of defendant's appellate counsel, the trial court subsequently reduced the restitution and mandatory supervision revocation restitution fines to \$240.

Counsel filed an opening brief that sets forth the facts of the case and requests that we review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant filed a supplemental brief raising several claims. As we shall explain, none of the claims have merit.

First, defendant contends that, as a "first time offender," he falls within the scope of the exception provided in section 30600, subdivision (c), and should therefore not have been charged with more than one count of violating section 30600. Defendant misinterprets the wording of the statute.

Section 30600, subdivision (c), provides that, “[e]xcept in the case of a *first violation* involving not more than two firearms as provided in Sections 30605 and 30610, for purposes of this article, if more than one assault weapon or .50 BMG rifle is involved in any violation of this article, there shall be a distinct and separate offense for each.” (Italics added.) Here, as alleged in count one of the amended information, defendant’s *first violation* of section 30600, subdivision (a), occurred on July 3, 2012, and involved one weapon, a .223-caliber assault rifle. Defendant pleaded no contest to, and was convicted of, that single offense. As alleged in count six of the amended information, defendant’s *second violation* of section 30600, subdivision (a), occurred on July 16, 2012, and involved one weapon, a nine-millimeter semiautomatic rifle. He pleaded no contest to, and was convicted of, that offense as well. Defendant’s status as a “first time offender,” assuming he is one, is not relevant for purposes of section 30600. As such, the charges against him and the ensuing convictions did not violate section 30600, subdivision (c).

Next, defendant claims his trial counsel was inadequate. He complains he was represented by more than one attorney from the law firm retained to defend him. That, of course, is not uncommon when a firm of lawyers is retained to represent a client. In any event, defendant fails to show, as he must, how the separate or collective performance of any of those attorneys was deficient or fell below an objective standard of reasonableness under prevailing professional norms (*Strickland v. Washington* (1984) 466 U.S. 668 [80 L.Ed.2d 674]; *People v. Hawkins* (1995) 10 Cal.4th 920, 940), and the record sheds no light in that regard.

Defendant also claims it was his understanding he would receive a “6 in 6 out split” (i.e., six years in prison, to be served in county jail, and six years on mandatory supervision) as recommended in the probation report, but the trial court refused to impose a six/six split sentence due to the fact that his minor daughter was present “with

[firearms] in the car,” a point he claims was incorrect because the guns he sold to the undercover ATF agent “were not complete firearms.” Defendant’s claim is not borne out by the record. At the time defendant entered his plea, the prosecutor confirmed that the stipulated 12-year sentence was “not to be served as a split term.” Defendant acknowledged he heard what the prosecutor said, agreed that the stipulated sentence was “12 years in the county jail,” and entered his no contest plea accordingly. Discussion of a six/six split sentence did not occur until two months later at the sentencing hearing, when the court noted the probation department’s recommendation of “a split sentence . . . with the defendant serving six years in custody at the outset followed by six years of mandatory supervision.”

To the extent defendant blames defense counsel for any perceived error in his sentence, the claim fails. In light of the recommendation in the probation report, and notwithstanding defendant’s stipulation at the plea hearing, defense counsel argued for the recommended six/six split sentence, bringing to the court’s attention defendant’s “very insignificant prior record,” the numerous letters of support from family members and friends, and the fact that defendant’s offense was, in the context of his overall history, “an isolated incident.” The prosecution noted that defendant’s plea “stipulated that it would be 12 years in custody,” but agreed it was appropriate to impose a nine/three split, with nine years in custody followed by three years of mandatory supervision. Acknowledging defendant’s “fairly insignificant prior history” and the letters of support filed on his behalf, the court imposed a nine/three split sentence. Thus, defendant was ultimately sentenced to less time in custody than that to which he stipulated. He has not shown, nor does the record reveal, how defense counsel was prejudicially ineffective.

Finally, to the extent defendant claims the trial court erred in imposing the nine/three split sentence, that claim fails as well. Under the 2011 Realignment Legislation, a trial court may commit a defendant to the county jail either “[f]or a full

term in custody as determined in accordance with the applicable sentencing law” (§ 1170, subd. (h)(5)(A)) or “[f]or a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court’s discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court” (§ 1170, subd. (h)(5)(B)). We review a trial court’s sentencing decision for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376-377 (*Carmony*).)

We cannot say the trial court abused its discretion in imposing the nine/three split sentence. After considering the probation report and counsel’s arguments, and acknowledging defendant’s “fairly insignificant prior history,” the court based its sentencing decision on the fact that defendant “failed to appreciate . . . the inherent dangers of selling firearms of the nature that he sold in this case”—“assault weapons and high-capacity magazines sold outside the scrutiny of law enforcement and outside the scrutiny of the law, outside of registration requirements, without background checks—which th[e] Court believe[d] [wa]s extremely dangerous.” This fact does not render the court’s decision “ ‘ ‘clearly . . . irrational or arbitrary.’ ’ ” (*Carmony, supra*, 33 Cal.4th at p. 376.) In the absence of such a showing, “ ‘ ‘the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ ’ ” (*Id.* at pp. 376-377.)

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

BUTZ, J.

We concur:

ROBIE, Acting P. J.

MURRAY, J.