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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. CESARE REDMOND, Defendant and Appellant.	C086762 (Super. Ct. Nos. 95F06243, 97F01724)

Appointed counsel for defendant Cesare Redmond has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues in this appeal from the trial court's post-judgment order. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we affirm the trial court's post-judgment order.

FACTUAL AND PROCEDURAL BACKGROUND

On February 21, 1997, at around 12:41 a.m., an officer heard 17 rapid-fire shots. He was dispatched to an apartment complex on Mack Road, where three cars parked in the lot displayed numerous bullet holes. Two victims were found in an apartment, with one of the victims having sustained a bullet wound to the right arm and elbow.

On February 25, 1997, at around 11:45 p.m., 63-year-old L.F. responded to a knock on the door from a man identifying himself as Michael, who asked for L.F.'s stepson, Andre. He told the man it was too late for Andre to talk to anyone and suggested he return later. About 15 minutes later, while L.F. was seated on the couch, people started shooting his house. He sustained a minor gunshot wound to the right hand. Officers found 11 bullet holes in the garage door area and 9 bullet holes in the front door area. A car in the garage was damaged by the gunfire, and bullets were found in the backyard.

Defendant was convicted of two counts of assault with an assault rifle (Pen. Code, § 245, subd. (a)(3)),[1] two counts of assault with a semi-automatic firearm (§ 245, subd. (b)), unlawful possession of an assault rifle (former § 12280, subd. (b); Stats. 1996, ch. 305, § 52, pp. 2297-2300), felon in possession of a firearm (former § 12021, subd. (a); Stats. 1995, ch. 178, § 1, pp. 642-646), possession of marijuana for sale (§ 11359, subd. (a)), with enhancements for personally using a firearm and personally using an assault weapon (former § 12022.5, subds. (a)(1), (b)(2); Stats. 1995, ch. 377, § 9, pp. 1949-1951) in case No. 97F01724. He was also convicted of escape from the Youth Authority (now the Department of Juvenile Justice) (Welf. & Inst. Code, § 1768.7) in case No. 95F06243. Sentencing him in both cases, the trial court imposed a 35-year 4-month state prison term,

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[1] Undesignated statutory references are to the Penal Code.

ordered various fines and fees, awarded $46,682 in victim restitution, and awarded 339 days of presentence credit (295 actual and 44 conduct) in case No. 97F01724 and 97 days of presentence credit, (65 actual and 32 conduct), in case No. 95F06243.

In December 2017, defendant filed three pro per motions in which he sought to modify victim restitution and the award of presentence credits, and to impose a concurrent term pursuant to section 1205 as an offset to his fines. The trial court issued an order dismissing the motion to modify restitution and denying the other two motions. Defendant appeals from this order.

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant filed a supplemental brief raising four contentions.

Defendant first contends he is entitled to resentencing on his possession of marijuana for sale conviction under the standard announced in *People v. Frierson* (2017) 4 Cal.5th 225. Defendant did not seek resentencing on his marijuana conviction in the motions that are the subject matter of his appeal. His contention is outside the subject matter of this appeal.

Next, defendant seeks remand for the trial court to exercise its discretion to strike any or all of his former section 12022.5 convictions pursuant to the amendments to the firearm enhancement statutes enacted in Senate Bill No. 620 (2017-2018 Reg. Sess.) that amended sections 12022.5, subdivision (c), and 12022.53, subdivision (h), effective January 1, 2018 (Stats. 2017, ch. 682, §§ 1 & 2, respectively). The presumption that a change in the law reducing punishment for a crime applies retroactively, applies only to nonfinal judgments. (*In re Estrada* (1965) 63 Cal.2d 740, 744-745, 748.) Since defendant's conviction is long since final, the changes to the firearm enhancements do

not apply to his case. Once the judgment became final, the trial court lacked authority to modify the sentence in the way defendant seeks. (See §§ 1263, 1265; *People v. Maggio* (1929) 96 Cal.App. 409, 410-411.)

Defendant next contends the trial court erred in failing to award 270 days of credit for time spent in custody in case No. 95F06243. An error in the calculation of presentence credits may be corrected at any time. (*People v. Duran* (1998) 67 Cal.App.4th 267, 270.) In ruling on the motion to modify credits, the trial court took judicial notice of its own records and found defendant was originally granted four years' probation with 270 days in jail and 65 days of credit in case No. 95F06243. The record of defendant's sentencing in both cases likewise indicates he served a total of 65 days of the 270-day term in case No. 95F06243 and was awarded 65 days of actual and 32 days of conduct credit to be applied to the concurrent state prison term in that case. Based on the record, the award of credits is correct.

Defendant's final contention is there was insufficient evidence to support the victim restitution award. While the trial court retains continuing jurisdiction over the case under section 1202.42 to modify the award of victim restitution (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1207), defendant's supplemental brief does not address changes in defendant or the victims' conditions that support modification of the restitution award. Instead, defendant's appeal from the post-judgment order seeks to raise a matter that could have been addressed in the appeal from his conviction. Defendant's failure to raise the contention then forfeits the matter now.

We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment (order) is affirmed.

/s/
HOCH, J.

We concur:

/s/
RAYE, P. J.

/s/
RENNER, J.