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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN VALDEZ,

Defendant and Appellant.

F063068

(Super. Ct. No. VCF148363)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Joseph A. Kalashian, Judge.

Victor J. Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Gomes, Acting P.J., Kane, J. and Poochigian, J.

Appellant, Ruben Valdez, appeals following a modification of his sentence pursuant to the Supreme Court’s decision in *People v. Lopez* (2005) 34 Cal.4th 1002 (*Lopez*). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 426 (*Wende*), we affirm.

INTRODUCTION

In 2006, Valdez was convicted of attempted first degree murder (count 1/Pen. Code, §§ 664 & 187),¹ shooting at an occupied motor vehicle (count 2/§ 246), carrying a loaded firearm (count 3/§ 12031, subd. (a)(1)), unlawful firearm activity (count 4/§ 12021, subd. (e)), resisting an executive officer (count 5/§ 69), and resisting arrest (count 6/§ 148, subd. (a)(1)). Additionally, in counts 1 through 5, a gang allegation, pursuant to section 186.22, subdivision (b), was found true; in count 6, a gang allegation, pursuant to section 186.22, subdivision (d), was found true, which converted that offense from a misdemeanor to a felony; and an arming enhancement (§ 12022.53, subd. (d)) and a great bodily injury enhancement (§ 12022.7, subd. (a)) were found true in counts 1 and 2.

Valdez’s original sentence in count 1 included a 10-year gang enhancement, pursuant to section 186.22, subdivision (b)(1)(C),² and a minimum parole eligibility term of 15 years pursuant to section 186.22, subdivision (b)(5).³

¹ All further statutory references are to the Penal Code.

² Section 186.22, subdivision (b)(1), in pertinent part provides: “Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of ... any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony ... be punished as follows: [¶] ... [¶] (C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.”

³ Section 186.22, subdivision (b)(5) provides: “Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.”

In *Lopez, supra*, 34 Cal.4th 1002, the Supreme Court held that a defendant who commits a crime for the benefit of a criminal street gang and is sentenced to a life term is not subject to a 10-year enhancement pursuant to section 186.22, subdivision (b)(1)(C), but is subject to the 15-year minimum parole eligibility term pursuant to section 186.22, subdivision (b)(5). (*Lopez, supra*, 34 Cal.4th at pp. 1006-1007.) Therefore, under *Lopez*, the 10-year enhancement imposed in count 1, pursuant to section 186.22, subdivision (b)(1)(C), was unauthorized.

THE CURRENT APPEAL

On February 17, 2011, the Supreme Court sent a letter to the Attorney General asking for a response to an allegation in a petition for habeas corpus filed by Valdez that his sentence was “unauthorized because he received both a 10-year sentence pursuant to ... section 186.22, subdivision (b)(1)(C) as well as a minimum parole term of 15 years pursuant to ... section 186.22, subdivision (b)(5). (See *People v. Lopez*[, *supra*,] 34 Cal.4th 1002.”

In an informal response filed on March 17, 2011, the Attorney General conceded that Valdez was entitled to have his sentence modified.

On June 22, 2011, the Supreme Court issued to the Department of Corrections and Rehabilitation an order to show cause why Valdez was not entitled to have his sentence modified pursuant to *Lopez, supra*, 34 Cal.4th 1002.

On July 27, 2011, the trial court resentenced Valdez as follows: life with the possibility of parole on his attempted murder conviction in count 1, with a minimum of 15 years before parole eligibility pursuant to section 186.22, subdivision (b)(5), 25 years to life on the arming enhancement in that count, and a stayed three-year term on the great bodily injury enhancement in that count; a stayed, aggregate 40 years to life on count 2 (15 years to life pursuant to section 186.22, subd. (b)(4) on his conviction for shooting into an occupied vehicle conviction and 25 years to life on the arming enhancement in that count); an aggregate five-year term on Valdez’s carrying a loaded firearm conviction

in count 3 (the middle term of two years on the substantive offense and a three-year term on the gang allegation in that count); a stayed, aggregate five-year term on his unlawful firearm activity conviction in count 4 (the middle term of two years on the substantive offense and a three-year term on the gang allegation in that count); a consecutive aggregate 20-month term on his resisting an executive officer conviction in count 5 (eight months, i.e., one-third the middle term of two years on the substantive offense and one year, i.e., one-third the middle term of three years, on the gang allegation in that count); and a stayed two-year term on his resisting arrest conviction in count 6.

Valdez's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*Wende, supra*, 25 Cal.3d 436.) Valdez has not responded to this court's invitation to submit additional briefing.

Following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.