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

THE PEOPLE,

Plaintiff and Respondent,

v.

CONSTANTINO CARRERA,

Defendant and Appellant.

F071991

(Super. Ct. No. SC023918A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. John W. Lua,  
Judge.

Marcia Levine, 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 Levy, Acting P.J., Franson, J. and McCabe, J.†

† Judge of the Merced Superior Court assigned by the Chief Justice pursuant to  
article IV, section 6 of the California Constitution.

Appellant Constantino Carrera was originally convicted in 1983 of robbery (count 3/Pen. Code, § 211)<sup>1</sup> and two counts of first degree murder (counts 1 & 2/§ 187) with special circumstances (§ 190.2, subd. (a)) and sentenced to death. He appeals from an indeterminate sentence of 50 years to life that was imposed following his resentencing after the Federal District Court for the Eastern District of California vacated and set aside the special circumstances that made him eligible for the death penalty. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

On April 12, 1982, Carrera, who was then 20 years old, and 17-year-old codefendant Ramiro Ruiz-Gonzales stabbed to death motel managers Jack and Carol Hayes during a robbery at the Imperial 400 Motel in Mojave, California.

On July 27, 1983, a jury convicted Carrera of robbery (count 3/§ 211) and two counts of murder (counts 1 & 2/§ 187). The jury also found true special circumstances of robbery-murder (§ 190.2, subd. (a)(17)(A)) and multiple murders (§ 190.2, subd. (a)(3)), which made Carrera eligible for the death penalty.

On August 5, 1983, during the penalty phase of the trial, the jury returned a verdict of death.

On October 14, 1983, the judgment of death was entered by the court.

On March 13, 2008, based on instructional error, prosecutorial misconduct and witness perjury, the Federal District Court for the Eastern District of California granted Carrera habeas corpus relief and vacated and set aside the special circumstances that made Carrera eligible for the death penalty.

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

On May 6, 2015, Carrera filed a motion to compel resentencing/petition for writ of habeas corpus in the trial court requesting that he be resentenced and housed off death row where he was then incarcerated.

On June 16, 2015, the district attorney elected not to retry the penalty phase of Carrera's trial and conceded that he should be resentenced.

On July 9, 2015, the prosecutor dismissed the special circumstances. The court also sentenced Carrera to an indeterminate term of 50 years to life, consisting of consecutive terms of 25 years to life on Carrera's two murder convictions and a stayed, determinate term of five years on Carrera's robbery conviction. In imposing consecutive terms, the court found that Carrera's crimes involved great violence which disclosed a high degree of cruelty and callousness, Carrera used a weapon in committing the offenses, the victims were particularly vulnerable, Carrera's codefendant had knowledge of the motel operation having been a former employee, Carrera threatened at least two witnesses, and he attempted to suborn perjury through several witnesses.

Carrera'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. (*People v. Wende, supra*, 25 Cal.3d 436.) Carrera has not responded to this court's invitation to submit additional briefing.

However, our review of the record disclosed that Carrera's abstract of judgment contains an error. Because Carrera was sentenced to life with the possibility of parole on each murder count (counts 1 and 2), this should have been indicated in section 5 of Carrera's abstract of judgment, but it was not. We will direct the trial court to correct this error.

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

### **DISPOSITION**

The trial court is directed to issue an amended abstract of judgment that indicates in section 5 that Carrera was sentenced to life with the possibility of parole and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.