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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD LOPEZ,

Defendant and Appellant.

H037981

(Santa Clara County

Super. Ct. No. CC1111710)

Defendant Richard Lopez and his wife, codefendant Brittney Elaban, drove up to a liquor store in San Jose, and saw three members of a rival gang sitting in a parked car next to them. Defendant jumped out of the car and attacked the driver of the car, stabbing him multiple times. A fight between defendant, the victim and the victim's two passengers continued for a few minutes before defendant jumped back into his car and he and his wife drove away.

Defendant appeals from a judgment entered when he plead guilty to premeditated attempted murder (Pen. Code, §§ 664, subd. (a)/187), and admitted gang, weapons and great bodily injury enhancements. (Pen. Code, §§ 12022, subd. (b)(1); 12022.7; 186.22, subd. (b)(1)(C).) Prior to sentencing, the defendant sought to withdraw his plea on the grounds that he made a mistake. Because defendant's counsel could articulate no legal grounds for withdrawing the plea, the court denied the request. Pursuant to a plea agreement, the trial court sentenced defendant to the upper term of nine years for the

attempted murder and imposed a consecutive 10-year sentence for the gang enhancement for a total of 19 years in prison. The court struck the sentences for the other enhancements, and imposed a variety of fines and fees. The trial court granted a certificate of probable cause on the issue of the withdrawal of the plea, and this timely appeal ensued.

On appeal, appointed counsel filed an opening brief which states the case and the facts but raises no specific issues. We notified defendant of his right to submit written argument in his own behalf within 30 days. On May 24, 2012, we received a letter from the defendant asking this court to modify the sentence by striking the gang enhancement. Defendant argues that there was insufficient evidence to support the conclusion that he committed the crime for the benefit of a criminal street gang. He contends that he committed the crime in defense of his family. Even if there were evidence in the record to support defendant's claim, defendant admitted this enhancement as part of a negotiated plea bargain in exchange for a significantly lower sentence. He could articulate no legal grounds for withdrawing the plea, and he is, therefore, bound by it.

Pursuant to our obligation as set forth in *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the record and defendant's letter and have found no arguable issue on appeal.

DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

MÁRQUEZ, J.