

Supreme Court Copy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF
CALIFORNIA, Plaintiff and Respondent,

vs.

VICTOR CORREA,
Defendant and Appellant.

No. S163273

(Related Cases: Third
Appellate District. C054365;
Sacramento Superior Court No.
06F01135)

SUPREME COURT
FILED

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Deputy

APPEAL FROM THE SUPERIOR COURT OF SACRAMENTO COUNTY
Honorable, Patricia C. Esagro, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

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CERTIFICATE OF COMPLIANCE

The brief is proportionately spaced with Times Roman typeface, point size of 13, and the total word count is 1,480 words, and thus is within the limits (4,200 words) of California Rules of Court, rule 8.520, subdivision (c).

ARGUMENT

SECTION 654 REQUIRES THAT SIX OF THE SEVEN SENTENCES FOR POSSESSION OF A FIREARM BY A FELON MUST BE STAYED

Appellant, 42 years old at the time his sentence was imposed (CT 12, 232), will be serving two consecutive sentences of 25 years to life¹ (CT 273) if this Court concurs in appellant's position that Penal Code section 654² proscribes his punishment for multiple instances of possession of a firearm by a felon (§ 12021³.)

Respondent and the prosecution below are apparently concerned that appellant's potential release at the age of 92 is premature. They would like to see him serve 25 years to life terms for all seven of the firearm possession offenses for which he was convicted. They apparently believe that an additional 150 year minimum term is warranted for the undisputed single incident in which he was found with seven firearms stacked on the floor in a below-stairs closet near his feet.

¹ These are composed of sentences on Count 1, possession of a firearm by a person convicted of a felony in violation of Penal Code section 12021, subdivision (a), and Count 12, receiving stolen property in violation of Section 496, subdivision (a), both enhanced by allegations that appellant had suffered two prior felony convictions within the meaning of Sections 667, subdivisions (b) through (i), and 1170.12. (CT 273.)

² Section 654 provides in pertinent part:
(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. (§ 654, subd. (a).)

³ Section 12021, subdivision (a) provides in pertinent part:
(a)(1) Any person who has been convicted of a felony under the laws of the United States, the State of California, or any other state, government, or country ... and who owns, purchases, receives, or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

¶

This case began and now seeks affirmance of an instance of prosecutorial over-pleading. (See *People v. Fuller* (1975) 53 Cal.App.3d 417, 420, fn. 2 [125 Cal.Rptr. 837].)

The limitations of section 654 are mandatory and jurisdictional and distinct from the constitutional guarantee against double jeopardy. (Witkin, *California Criminal Law, Punishment* (3d ed. 2000) § 129, p. 193.) Section 654 applies to sentencing both for crimes flowing from a single act and for crimes resulting from an indivisible course of conduct which violates more than one statute. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208 [23 Cal.Rptr.2d 144]; accord *People v. Herrera* (1999) 70 Cal.App.4th 1456, 1466 [83 Cal.Rptr.2d 307].) “Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of Section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*Neal v. State of California* (1960) Cal.2d 11, 19 [9 Cal.Rptr. 607]; *People v. Perez* (1979) 23 Cal.3d 545, 551 [153 Cal.Rptr. 40].)

“The question of whether the defendant held multiple criminal objectives is one of fact for the trial court, and, if supported by any substantial evidence, its finding will be upheld on appeal.” (*People v. Herrera, supra*, at p. 1466.) However, the dimensions and meaning of Section 654, and its application to conceded or undisputed facts, is a question of law. (*People v. Harrison* (1989) 48 Cal.3d 321, 335 [256 Cal.Rptr. 401]; *People v. Perez, supra*, 23 Cal.3d at p. 552, fn. 5.)

Here it is undisputed that all of the firearms were found in one place at one time near appellant’s feet, in a home occupied by a number of adult family members. The only evidence of appellant’s involvement with the firearms is his proximity to them at the time of his arrest. The trial court described them as “a cache ... of weapons.” (3RT 758.) Thus, whether

appellant is released at a minimum age of 92 or when he is 242, or some point in between, turns upon these undisputed facts.

The trial court concluded that “there would be a different purpose and a different crime for each... [firearm].” (*Ibid.*) The question of course is did appellant hold multiple criminal objectives. (*People v. Herrera, supra*, 70 Cal.App.4th 1456.)

Respondent concedes that appellant could only use one firearm at a time.⁴ (RB, pp. 7, 11, 23.) From this premise, Respondent offers a non sequitur: “As a result, appellant’s stockpile of weapons represented a severe risk to the public, and it was proper for the court to conclude that each weapon had a different nefarious purpose.” (RB, p. 7.) From the same premise, Respondent later proffers a second non sequitur: “[This] is indicative of appellant’s multiple criminal objectives. Because appellant could only use one weapon at a time, he logically harbored multiple criminal objectives as to each weapon.” (RB, p. 23.) Yet, here the only objective that made possession of these firearms criminal, was appellant’s objective to possess them despite his felon status. One, two, three, ... or seven firearms, there was still only one felon capable of firing one firearm.

Respondent in an apparent effort to overcome the weakness of their position offers a third non sequitur: “There is no lawful way for appellant to possess a firearm. He cannot purchase weapons from a licensed dealer, and therefore the lawful owner of each of the weapons in appellant’s possession is a victim.”⁵ (RB, p. 24.) If Respondent is introducing property law concepts into the mix, Respondent has not explained why appellant is not a “lawful” owner, other than for the criminal law sanctions for

⁴ The point of this is that with one shooter, it is not the number of weapons that significantly increase the danger, but rather the number of rounds available to him.

⁵ Respondent makes the same point at page 11.

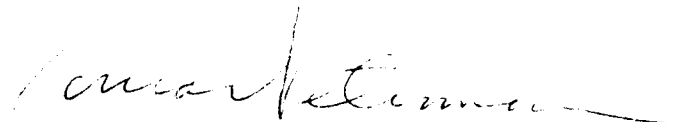
possession of a firearm by a felon. Respondent's contrivance here is an effort to produce multiple victims to make this case look more like *People v. Butler* (1996) 43 Cal.App.4th 1224, 1248-1249 [51 Cal.Rptr.2d 150] where the defendant was convicted and sentenced on two counts of possession of a cloned cellular telephone. Mr. Butler's section 654-claim there failed not just because there were two phones in his possession, but because there were two victims, each a *lawful* owner of one of the phones. In short, the gravitas of the offense was twice as great. Of course in appellant's case, he was the *lawful* owner from a property law standpoint and no identifiable individual was victimized by any of the firearms possession.

Finally, in Appellant's Opening Brief it was demonstrated that the gravitas of a violation of section 12021, subdivision (a) was appellant's status as a felon, and had nothing to do with the nature or even the number of the weapons possessed. As noted in footnote 4 above, since appellant could only fire one firearm at a time, the number of firearms in his possession did not increase the danger to society. It is appellant's status that is at the core of these offenses, not the weapons themselves, whatever their caliber and whatever their number.

CONCLUSION

For the foregoing reasons, appellant's sentence should be reversed and the case remanded for sentencing.

Dated: October 27, 2008



Respectfully submitted,
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DECLARATION OF SERVICE

I, undersigned, say: I am a citizen of the United States, a resident of Ventura County, over 18 years of age, not a party to this action and with the above business address.

On the date executed below, I served the *APPELLANT'S REPLY BRIEF ON THE MERITS* by depositing a copy thereof in a sealed envelope, postage thereon fully prepaid, in the United States Mail at Ojai, California. Said copies were addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 27, 2008, at Ojai, California.


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