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REPORTS**

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADRIAN MEDINA LOPEZ,

Defendant and Appellant.

B272442

(Los Angeles County
Super. Ct. No. VA125978)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patrick Meyers, Judge. Affirmed.

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Kathleen A. Kenealy, Acting Attorney General, Gerald A. Engler, Chief Deputy Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M.

Roadarmel, Jr., and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Adrian Medina Lopez, pled no contest to one count of voluntary manslaughter in violation of Penal Code¹ section 192, subdivision (a). He also admitted gang and firearm allegations were true. (§§ 186.22, subd. (c), 12022.53, subd. (c).) At his sentencing hearing, defendant made a motion to withdraw his plea. The motion was denied and a sentence of 41 years in state prison was imposed pursuant to a plea agreement. Thereafter, a sentencing error was discovered and defendant was resentenced to 31 years in prison. He again moved to withdraw his plea but that motion was denied.

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues but requesting we independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. (See *Smith v. Robbins* (2000) 528 U.S. 259, 227-284.) On September 7, 2016, we advised defendant that he had 30 days within which to file a supplemental brief identifying any

¹ Unless otherwise noted, all future statutory references are to the Penal Code.

contentions he wanted this court to consider. Defendant did not file a supplemental brief.

We have reviewed the record. Having found no arguable issues, we affirm the judgment.

BACKGROUND

A. Information and Plea

An information was filed charging defendant with murder (Pen. Code, § 187, subd. (a)), and four counts of attempted murder (§§ 187, 664, subd. (a)). In addition, the information contained gang and firearm-use allegations corresponding to each charge. (§§ 186.22, subds. (b)(1)(C), (b)(5), 12022.53, subd. (d).)

On September 16, 2015, the fifth day of jury selection, defendant accepted the prosecutor's offer to plead no contest to voluntary manslaughter, admit gang and firearm enhancements, and receive a total term of 41 years in state prison. In order to effectuate the agreement, the information was amended to add, as count 6, voluntary manslaughter (§ 192, subd. (a)). In addition, count 6 was itemized, along with the other charged offenses, as a crime that was gang related (§ 186.22, subd. (c)) and involved the use of a firearm (§ 12022.53, subd. (c)).

Defendant signed a felony advisement of rights, waiver, and plea form. He adhered to his end of the bargain by pleading no contest to count 6 and admitting the two

alleged enhancements were true. Sentencing was set for January 16, 2016.

B. Motion to Withdraw Plea And Sentencing

On October 15, 2015, defendant filed a motion to withdraw his plea. In that pleading, defendant claimed he did not have enough time to evaluate whether he should accept the settlement offer and, because of his developmental disability, he needed time to “absorb information.” Defendant’s motion asserted he accepted the settlement because he was exhausted from jury selection and feared the result of the trial. None of these allegations were supported by testimony or a declaration executed by defendant.

On January 12, 2016, the trial court found defendant had not established good cause to withdraw his plea and denied the motion. It noted, over a course of three years and forty court appearances, defendant never gave any indication he was having difficulty understanding the nature of the proceedings. The trial court ruled: “[T]he instant court has determined that [defendant’s] plea was knowingly and intelligently entered of his own free will unhindered by any medical condition or other infirmity as well as having had adequate representation at the time. [¶] There is absolutely no proof in this record of any disability, infirmity, condition that would have prevented him from giving a knowing, intelligent plea of no contest in this case.”

Consistent with the plea agreement, the 41-year sentence was imposed as follows. On count 6, the trial court imposed the upper term of 11 years. Defendant also received 20 years for using a firearm and 10 years for the gang enhancement. The remaining charges were dismissed.

C. Resentencing

On April 27, 2016, at the suggestion of the prosecutor, the sentence was recalled to address a jurisdictional error related to the imposition of a 20-year term for the firearm enhancement. The problem was that section 12022.53, subdivision (c) did not apply to a conviction for voluntary manslaughter. (§ 12022.53, subd. (a); *People v. Fialho* (2014) 229 Cal.App.4th 1389, 1395.) The sentence was recalled without objection and the matter was continued, at defendant's request.

On May 9, 2016, there was a discussion off the record regarding a new offer made by the prosecutor. When the attorneys went back on the record, defense counsel indicated defendant is "not inclined to admit" the truth of a section 12022.5, subdivision (a) firearm enhancement, i.e., the 10-year enhancement that is applicable to a voluntary manslaughter conviction. Thus, we surmise the prosecutor's offer required the admission of such an enhancement. Defendant renewed his request to withdraw his plea, but his request was denied with the trial court stating, "[t]he plea is standing."

The trial court resentenced defendant to 31 years in state prison consisting of: the high term of 11 years for voluntary manslaughter; the high term of 10 years under section 12022.5, subdivision (a) for using a firearm; and 10 years for the gang enhancement. The trial court awarded defendant 1,572 custody credit consisting of 1,367 actual days plus 205 days of conduct credit.

Defendant subsequently moved to correct the presentence credit. The probation officer's report indicated defendant was arrested on August 14, 2012, but defense counsel stated defendant was actually arrested on August 8, 2012—a date that was not disputed by the prosecutor. Based on the corrected arrest date, the trial court issued a minute order on November 4, 2016, that increased the amount of custody credit to 1,576 days. The credit consisted of 1,371 actual days plus 205 days of conduct credit. The trial court filed an amended abstract of judgment reflecting the revised calculation on November 7, 2016.

DISCUSSION

1. Motions To Withdraw The Plea

The denial of a motion to withdraw a plea is reviewed for abuse of discretion. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208; *People v. Nance* (1991) 1 Cal.App.4th 1453, 1456.) No abuse of discretion occurred. Defendant never submitted a declaration demonstrating

there was good cause to set aside his very favorable plea bargain.

2. Enhancement Resentencing

Because the original term for the enhancement was unauthorized, the trial court had jurisdiction to correct the error. (*People v. Scott* (1994) 9 Cal.4th 331, 354; *People v. Serrato* (1973) 9 Cal.3d 753, 763.) In terms of the selection of the section 12022.5, subdivision (a) 10-year enhancement, defense counsel, apart from reiterating defendant wanted to set aside his plea, never objected. Thus, any challenge to its imposition would be forfeited. (*People v. Evans* (2008) 44 Cal.4th 590, 600; *People v. Villalobos* (2012) 54 Cal.4th 177, 182.)

Defendant was afforded due process. When defendant admitted the section 12022.53, subdivision (c) enhancement was true, said admission included all the elements of a section 12022.5, subdivision (a) allegation. Hence, there was no due process violation as a consequence of imposing a 10-year term for the latter enhancement. (*People v. Strickland* (1974) 11 Cal.3d 946, 959-961; *People v. Fialho, supra*, 229 Cal.App.4th at pp.1389, 1393-1394.)

3. Credits

We ordered the parties to address the issue of defendant's presentence custody credit. In their briefs, the

parties appropriately point out that the trial court addressed defendant's custody credit in its November 4, 2016, minute order. The People did not refute defense counsel's representation to the trial court that defendant was arrested on August 8, 2016, and do not argue in their brief that the August 8 date was incorrect.

We find no basis to adjust the trial court's calculation. The amount of custody credit is correctly reflected in the November 4, 2016, minute order and the amended abstract of judgment.

DISPOSITION

The judgment is affirmed.

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KUMAR, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.