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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS PERKINS,

Defendant and Appellant.

B296680

(Los Angeles County
Super. Ct. No. YA093458)

APPEAL from an order of the Superior Court of Los Angeles County, Scott T. Millington, Judge. Affirmed.

Janet Uson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

Marcus Perkins pleaded no contest in January 2018 to two counts of second degree robbery in violation of Penal Code section 211 and admitted the allegation he personally used a firearm in the commission of one of the robberies within the meaning of Penal Code section 12022.53, subdivision (b).¹ In accordance with the terms of the plea agreement, the trial court sentenced Perkins to 13 years in prison: the lower term of two years for one of the robberies, plus 10 years for the firearm enhancement, and a consecutive term of one year (one third the middle term of three years) for the other robbery. On the People's motion the court dismissed the remaining counts and allegations.

Representing himself, Perkins in December 2018 filed a "motion for modification of sentence" under Senate Bill No. 620, which amended section 12022.53, subdivision (h), to give trial courts discretion to strike a firearm enhancement under section 12022.53 in the interest of justice. Perkins asked the superior court to exercise its discretion under this new law, which became effective January 1, 2018, to strike or dismiss the 10-year enhancement the court imposed under section 12022.53, subdivision (b). The superior court denied the motion.

¹ Statutory references are to the Penal Code.

DISCUSSION

We appointed counsel to represent Perkins on appeal. After reviewing the record, counsel filed a brief raising no issues. On July 19, 2019 we notified Perkins he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted the court to consider. We have not received a response.

Perkins did not object to the 10-year enhancement when the trial court imposed it; in fact, he admitted the firearm allegation and agreed the court could impose the enhancement. Generally, an appellate court may only review arguments that were “properly raised and preserved” in the trial court (*People v. Anderson* (2010) 50 Cal.4th 19, 26), which Perkins did not do. There is an exception to this general rule for an unauthorized sentence; i.e., a sentence that “could not lawfully be imposed under any circumstance in the particular case.” (*Ibid.*) But that exception does not apply. First, at the time the trial court sentenced Perkins, imposition of the enhancement under section 12022.53, subdivision (b), was not unlawful; the court had discretion to impose it. Second, Perkins admitted the enhancement as part of a plea, which precludes him from challenging his sentence even if it were unauthorized. (Cf. *People v. Hester* (2000) 22 Cal.4th 290, 295; *People v. Otterstein* (1987) 189 Cal.App.3d 1548, 1549-1551.)

We have examined the record and are satisfied that appellate counsel for Perkins has complied with her responsibilities and that there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746]; *People v.*

Kelly (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The order is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.