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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRES RENE RODRIGUEZ,

Defendant and Appellant.

2d Crim. No. B287396
(Super. Ct. No. 2013028396)
(Ventura County)

Appellant Andres Rene Rodriguez pled guilty to first degree murder (Pen. Code, §§ 187, subd. (a), 189;¹ count 1), kidnapping (§ 207, subd. (a); count 2), and attempted murder (§§ 664, 187, subd. (a); count 3). As to count one, appellant admitted that he committed the murder while engaged in the commission of a kidnapping within the meaning of section 207 (§ 190.2, subd. (a)(17)(B)) and that he personally and intentionally discharged a firearm (§ 12022.53, subd. (d).) As to count 2, appellant admitted

¹ All further statutory references are to the Penal Code.

that he committed the kidnapping while armed with a firearm (§ 12022.53, subd. (b)). As to count 3, appellant admitted that he committed the attempted murder while armed with a firearm (§ 12022.53, subd. (c)).

The trial court sentenced appellant to life without the possibility of parole on count 1, plus 25 years to life for the firearm enhancement under section 12022.53, subdivision (d). As to count 2, the court imposed a concurrent eight-year term and ordered a section 654 stay of the firearm enhancement under section 12022.53, subdivision (b). As to count 3, the court sentenced appellant to life with the possibility of parole and ordered a section 654 stay of the firearm enhancement under section 12022.53, subdivision (c).

Appellant claims he is entitled to a remand to permit the trial court to decide whether to exercise its discretion to strike or dismiss his firearm enhancements in light of Senate Bill No. 620 (SB 620), which became effective on January 1, 2018. The Attorney General concedes the issue and we shall remand accordingly. We shall also order the correction of a clerical error in one of appellant's abstracts of judgment. Otherwise, we affirm.

FACTS²

On July 17, 2013, at approximately 11:11 p.m., officers were dispatched to a residence on N. Ojai Road in Santa Paula regarding a report of a female who had been shot. The victim, Angela Bryant, was found on the bathroom floor with a gunshot wound to her head. Bryant was still alive, but she later died at the hospital.

² The facts are derived from the probation report.

Shortly before Bryant was shot, Bryant and her boyfriend, Mark Flores, were inside the bathroom with the door closed and locked. Appellant, who was armed, entered the residence and kicked a hole through the locked door. Flores climbed out of the bathroom window and told Bryant to do the same. While he was climbing out, Flores heard one gunshot. He then heard several more gunshots as he ran towards the driveway. Flores jumped over some bushes and hid under a neighbor's car. Before hiding, Flores saw appellant running out of the residence.

Appellant, who is a known gang member with an extensive criminal history, got into a car driven by his co-defendant and girlfriend, Melissa Salazar. Appellant told her that he had retrieved some "stuff" that Bryant and Flores had stolen, including Salazar's laptop. Appellant then stated, "You'll hear sirens now." Salazar asked what happened, and appellant responded, "You should have seen them. It was so funny. They were both fighting for the window." Appellant admitted that he started shooting at Flores, who was climbing out the window, and that he "domed" Bryant after telling her to turn around and face the wall. Appellant said he had shot Bryant in the head.

Also inside the car was Sara Encinas, whom appellant had previously kidnapped at gunpoint. While Salazar was driving, appellant put a bag over Encinas's head. After they stopped, appellant and Salazar left Encinas in the car. Encinas removed the bag from her head and broke free of her restraints. She then fled on foot.

Police apprehended appellant at the Mexican border. Appellant invoked his *Miranda*³ rights, but spontaneously stated,

³ *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

“I’m pretty much done, I’m not ever going to walk the streets again.”

DISCUSSION

Remand to Consider Striking Firearm Enhancements

Appellant’s sentence includes a firearm enhancement of 25 years to life on count 1, a section 654-stayed firearm enhancement on count 2, and a section 654-stayed firearm enhancement on count 3. (See § 12022.53, subds. (b), (c), (d).)

At the time of appellant’s sentencing, trial courts had no authority to strike firearm enhancements proven or admitted under section 12022.53. (See former § 12022.53, subd. (h) [“Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section”], amended by Stats. 1071, ch. 682, § 2.) SB 620 removed this prohibition by adding the following language to section 12022.53, subdivision (h): “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.”

The Attorney General concedes that because appellant’s conviction was not yet final when SB 620 took effect, the new statutory amendment applies to him retroactively. (See, e.g., *People v. Phung* (2018) 25 Cal.App.5th 741, 762-763; *People v. Johnson* (2018) 25 Cal.App.5th 588, 628-629; *People v. Almanza* (2018) 24 Cal.App.5th 1104, 1109; *People v. Chavez* (2018) 22 Cal.App.5th 663, 712; *People v. Arredondo* (2018) 21 Cal.App.5th 493, 507; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1090-1091.) As we stated in *Almanza*, “[r]emand is required unless the

record reveals a clear indication that the trial court would not have reduced the sentence even if at the time of sentencing it had the discretion to do so.” (*Almanza*, at p. 1110.) Because it is agreed there is no such indication here, we shall remand the matter to the trial court to consider whether to exercise its discretion to strike or dismiss one or more of the firearm enhancements.

Remand to Correct Abstract of Judgment

Appellant contends, and the Attorney General agrees, the trial court erred when it described the firearm enhancement in count 3 as an allegation under section 12022.53, subdivision (d), instead of under section 12022.53, subdivision (c). This error, which appears in the abstract of judgment for appellant’s indeterminate sentence dated November 2, 2017, should be corrected on remand, unless the court elects to strike or dismiss the firearm enhancement in count 3.⁴

DISPOSITION

The sentences on appellant’s three firearm enhancements under section 12022.53 are vacated and the matter is remanded to the trial court to determine whether any or all of the enhancements should be stricken or dismissed. If the court does not strike or dismiss any of the enhancements, then the sentences on the enhancements shall be reinstated as originally imposed or stayed. Should the court decline to strike or dismiss the firearms enhancement admitted in count 3, it must nevertheless correct the abstract of judgment to reflect that the enhancement was imposed under section 12022.53, subdivision

⁴ The trial court may also wish to correct the same error in its minute orders dated September 12, 2017 and November 2, 2017.

(c), and not under section 12022.53, subdivision (d). A certified copy of the corrected abstract of judgment shall be forwarded to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Jeffrey G. Bennett, Judge
Superior Court County of Ventura

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