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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.

JESSE GENARO GRIJALVA,

Defendant and Appellant.

B290190

(Los Angeles County
Super. Ct. No. KA110868)

APPEAL from an order of the Superior Court of
Los Angeles County, Rogelio G. Delgado, Judge. Affirmed.

Lori A. Quick, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jesse Genaro Grijalva entered a negotiated plea of no contest on May 4, 2017 to six counts of assault on a peace officer with a semiautomatic firearm in violation of Penal Code section 245, subdivision (d)(2), and admitted as to each count he had used a firearm within the meaning of Penal Code section 12022.53, subdivision (c).

The same day, in accordance with the terms of the plea agreement, the trial court sentenced Grijalva to 25 years in state prison: the lower term of five years on count 1 plus 20 years for the firearm-use enhancement. The court imposed concurrent five year terms on each of the remaining five counts of aggravated assault on a peace officer and stayed sentencing on the firearm-use enhancements. On the People's motion the court dismissed count 7, carrying a concealed firearm (Pen. Code, § 25400, subd. (a)(2)). Grijalva did not pursue an appeal.

Representing himself, Grijalva on April 13, 2018 filed a petition for consideration of resentencing, requesting the superior court to exercise its newly created discretion under Senate Bill No. 620 to strike or dismiss the section 12022.53, subdivision (c), firearm-use enhancements. The superior court denied the petition on April 24, 2018, ruling that Senate Bill No. 620 did not apply retroactively to Grijalva's case.

On May 21, 2018 Grijalva filed a notice of appeal in which he marked the preprinted box labeled "other" and stated he was appealing the denial of his petition for resentencing. Concurrently with his notice of appeal Grijalva filed a request for certification of probable cause. The superior court did not rule on that request.

DISCUSSION

We appointed counsel to represent Grijalva on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On July 18, 2018 we advised Grijalva that he had 30 days within which to submit any contentions or issues he wished us to consider. We have received no response.

We have examined the record and are satisfied Grijalva's appellate attorney has fully complied with her responsibilities as counsel and no arguable issue exists. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

Even if Grijalva's nonstatutory motion for resentencing pursuant to Senate Bill No. 620's amendment of Penal Code section 12022.53, subdivision (h), were properly before the trial court, a somewhat doubtful proposition, his claim lacks merit. A criminal defendant who appeals following a plea of no contest or guilty without a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect the plea's validity. (Cal. Rules of Court, rule 8.304(b)(4); see *People v. Johnson* (2009) 47 Cal.4th 668, 678.) Grijalva is, in effect, challenging the validity of his plea without a certificate of probable cause by seeking modification of the sentence imposed as part of his plea agreement.

In any event, as the superior court ruled, the judgment in this case was final prior to January 1, 2018. Senate Bill No. 620's amendment to Penal Code section 12022.53, subdivision (h), applies retroactively only to cases not yet final on appeal on its

effective date. (*People v. Harris* (2018) 22 Cal.App.5th 657, 659; see *People v. Hurlic* (2018) 25 Cal.App.5th 50, 56.) Grijalva's case does not qualify for relief.

DISPOSITION

The order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.