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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. PERRY STUART, Defendant and Appellant.	B235144 (Los Angeles County Super. Ct. No. TA110909)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven E. Mercer and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Perry Stuart contends that substantial evidence did not support his conviction of attempted willful, deliberate, premeditated murder or that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang. He further contends that the trial court improperly denied his request for self-representation made on the day of the sentencing hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Information*

In a four-count information, appellant and co-defendant William Mormon were charged with three counts of attempted murder (Pen. Code, §§ 664/187, subd. (a)).[1] The information alleged that the attempted murders were committed willfully, deliberately and with premeditation, that a principal personally and intentionally discharged a firearm which proximately caused great bodily injury and death within the meaning of section 12022.53, subdivisions (b) through (d) and (e)(1), and that the offenses were committed for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members. It was further alleged that appellant had suffered prior convictions for violation of section 211 (robbery) and Health and Safety Code section 11351 (possession for sale of controlled substance).

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[1] Undesignated statutory references are to the Penal Code. The information's fourth count, for possession of a firearm by a felon (§ 12021, subd. (a)(1)), was ultimately dismissed.

B. *Evidence at Trial*

1. *Prosecution Evidence*

a. *Culpability Evidence*

On August 26, 2009, between 10 and 11 p.m., Andres Sanchez, Daniel Lopez and Erik Felix were conversing together in front of Sanchez's house on 107th Street. Sanchez was facing the street; Lopez and Felix were facing Sanchez. Sanchez saw a car pass by. The car was partially covered with primer and looked like a Cutlass or Celebrity. Eight or nine minutes later, the car came back, traveling in the opposite direction. At that point, the passenger side was closest to where the three men were standing. The back passenger window was halfway down; the front passenger window was all the way down. The passengers fired multiple shots at the three men.

Sanchez yelled to his friends to get "low." As he turned to warn his sister who was just coming from the house, he felt something hit him.[2] Sanchez fell to the ground in a sitting position, still facing the street. The gunfire stopped and the attackers' car began to drive away. The car was briefly obstructed by a black Expedition that had pulled onto the narrow street, allowing Sanchez to see inside the front of the vehicle. The driver and front passenger were African-American men. The front passenger's hair was in braids.[3]

Lopez heard Sanchez say "'watch out'" and threw himself on the ground.[4] Lopez did not see the attackers. In court, he identified appellant and Mormon as

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[2] Sanchez was shot once in the abdomen.

[3] Appellant had braids at the time.

[4] Lopez was shot seven times. He was in the hospital for more than three weeks, underwent two surgeries, and sustained a permanent loss of feeling in his left leg. Felix did not testify, but Sanchez testified he heard Felix say "'they hit me'" right after the shots were fired and Lopez testified that he had observed Felix walking with a limp in the
(Fn. continued on next page.)

two men he had seen around the neighborhood. Lopez had lived in the neighborhood for one or two years. He had known Sanchez 10 years. He had known Felix for a year or two. Neither Lopez nor his two friends were gang members. Sanchez and Felix had tattoos, but none were gang-related.

On September 2, 2009, Officer Oscar Pelagio made a traffic stop on 104th Street of a vehicle being driven by Mormon. Appellant was a passenger in the vehicle at the time.

On September 25, 2009, a month after the shooting, Officer Vanessa Rios and her partner were in a patrol car on 107th Street. They observed appellant talking to another man.[5] When appellant saw them, he grabbed his waistband and ran into a nearby residence. Officer Rios ran around the house to the rear yard and saw appellant coming out the back door holding a gun. She ordered him to stop. The officers arrested appellant and found a gun magazine in appellant's pocket. They found a gun in the yard near where appellant had been stopped. The magazine in appellant's pocket held the same caliber ammunition as the gun. There was one live round in the gun. It was a brand of ammunition known as "A-Merc." After appellant was handcuffed, as he was being led away, he made a gang sign for the Front Street Crips with his fingers.

Officers had collected numerous shell casings and two partial bullets from the location of the shootings. Five of the shell casings were "A-Merc's." Marissa Bowen, a ballistics expert, test fired the gun retrieved the night appellant was arrested and compared the bullets and casings from the test fire with the bullets and

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aftermath of the incident. Officer Rogelio Ramirez, who arrived immediately after the shooting, saw three injured men. One had been shot in the buttocks, one had suffered multiple wounds, and one had been shot in the abdomen.

[5] The man was later identified as Ivin Gant, a member of the Front Street Crips.

casings found at the scene. She concluded that one bullet and a number of the casings found at the scene had been fired from that gun.

While in the hospital, Sanchez provided descriptions of two of the assailants, but told police officers that he did not see the driver well enough to describe him. Sometime later, Sanchez was shown two photographic six-packs of suspects, neither of which contained photos of appellant or Mormon. Sanchez stated it was "none of th[o]se guys." After appellant's arrest in September 2009, Sanchez was shown another six-pack and identified appellant as the "gunman" and "one of the ones that shot [at] us," specifically from the front passenger window. Two months later, Sanchez was shown a new six-pack and identified a photo of Mormon as "look[ing] like the driver."[6] At trial, Sanchez identified appellant as the driver and Mormon as the passenger. Sanchez also testified that he had seen appellant and Mormon walking or driving around the neighborhood prior to the shooting, and that on two or three occasions, he had talked with Mormon about cars. The day after the shooting, Sanchez saw Mormon drive by his house.

Sanchez testified that following the shooting and his identification of the perpetrators, he did not feel safe living in the neighborhood and feared for the safety of his family. He sold his house and moved to a new location, but continued to see appellant's brother, who was also present in the courtroom, and whom Sanchez recognized as a member of the Front Street Crips. Sanchez knew the consequences of being a "snitch" and acknowledged that the presence of

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[6] Immediately after the shooting, Sanchez told officers that he had seen the car used in the shooting "around the block" and specified a house where he had seen it parked. Officers located a car that matched Sanchez's general description registered to Mormon at that residence. However, Sanchez did not positively identify Mormon's car as the car he had seen on the day of the shooting, either at trial or when shown a photograph by investigating officers.

appellant's brother might have affected his testimony. The gang expert identified appellant's brother as a "shot caller" for the Front Street Crips.

b. *Gang Evidence*

Appellant and Mormon admitted to police officers before the shootings that they were members of the Front Street Crips. Appellant was seen numerous times in the months prior to the shootings in the company of other Front Street Crips gang members. Appellant had multiple gang-related tattoos, including: the initials "FSW," which stands for "Front Street Watts," on his chest and the back of his neck; depictions of playing cards on his arm, with "F" and "S" substituted for the suit or numbers; "107 Street," which is a street claimed by Front Street Crips, on the back of his neck; an "F" and an "S" on the backs of his arms; "FL" and the words "Front Line," which are other ways to refer to Front Street Crips gang members, on his lower left arm; the initials of rival gang Back Street Crips with a line through the "B" and "S" on his forearm; and "CPK," which stands for Circle City Piru killer, and "SLOB" with the "B" crossed out, a disrespectful reference to Blood gangs, also on his forearm.

The gang expert, Detective Erik Shear, testified that the tattoos on appellant's forearm indicated a high level of dedication to his gang, as they would be visible when he was dressed in street clothes. Detective Shear testified that the Front Street Crips gang has approximately 100 members. It is an African-American gang, whose rivals include the South Los, a Hispanic gang, the Back Street Crips, the Circle City Pirus, the 108 Bounty Hunters and the Hustlers. Its claimed territory is bordered by Century Boulevard on the north, 108 Street on the south, Central Avenue on the east and Avalon Boulevard on the west. The shootings occurred on 107th Street, just outside Front Street Crips claimed territory, in Eastside Hustler Crips territory. Mormon's residence was nearby, also

just inside Eastside Hustler Crips claimed territory. Detective Shear testified that gang borders are not well defined and that border disputes are common.

Detective Shear described predicate offenses committed by two Front Street Crips gang members: robbery, possession of marijuana for sale and possession of a firearm by a felon. Detective Shear was given a hypothetical question based on the evidence in the case. He testified the shootings were clearly committed "in association with" fellow gang members. He further testified that the shootings benefited the Front Street Crips gang by intimidating the population in the area and making it easier for Front Street Crips members to commit other crimes, such as drug sales, robberies and burglaries, without being reported. The shootings also enhanced Front Street Crips's reputation for violence with other gangs, making it less likely that they would encroach on Front Street Crips's claimed territory, and enhanced the personal reputation and status of Front Street Crips members involved in the shootings. Asked specifically whether the lack of any gang challenge had an effect on his opinion, Detective Shears replied, "No, not at all." Asked whether the fact that the victims were not gang members was significant, he testified: "[I]n [that] scenario . . . , it's kind of a win/win for the gang doing the shooting. If they're rival gang members, then great; you shot rival gang members, and it makes a statement to that gang. [¶] If they're not, it still makes a statement to the neighborhood. And, in a sense, it could be even more powerful because it can show, 'we don't care if you're gang members or not; it doesn't matter who you are, we'll shoot anybody.' And that sends a message to people who aren't even gang members."

2. *Defense Evidence*

Mormon presented an expert, a forensic DNA consultant, who testified that if there were three people in the vehicle, it should have been possible to find DNA

samples on an object one of them might have touched or from shed hair or skin cells. He further testified that cartridge casings could be tested for DNA to determine who had handled them before the gun was fired.

Beulah Stuart, appellant's sister, testified that she was present the day appellant was arrested. She said appellant was standing in the doorway of the house when the police drove up. He came out of the house with his hands up. The officers searched appellant. Ms. Stuart did not see them retrieve anything from appellant's pockets. After searching appellant and placing him in handcuffs, the officers went through the house and the backyard.

C. *Verdict and Sentencing*

Appellant was found guilty of all three charges. Mormon was acquitted. The jury further found that the attempted murders were willful, deliberate and premeditated, and that they were committed for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further or assist in criminal conduct by gang members. The jury also found true that appellant had personally used a handgun, causing great bodily injury to each victim.

The court found true that appellant had sustained two prior convictions. The court sentenced appellant to a sentence of 39 years to life for each count (7 years to life for each attempt, doubled, plus 25 years to life for the firearm enhancement), to be served consecutively.

DISCUSSION

A. *Substantial Evidence*

Appellant contends the evidence was insufficient to support the jury's finding that the attempted murders were willful, deliberate and premeditated or its true finding on the gang allegation.

When determining whether the evidence is sufficient to sustain a criminal conviction, "our role on appeal is a limited one." (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) "[T]he test of whether evidence is sufficient to support a conviction is 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.]" (*People v. Holt* (1997) 15 Cal.4th 619, 667, italics omitted, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 319.) Reversal is not warranted unless it appears that "'upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

1. *Premeditation*

"[T]he crime of attempted murder is not divided into degrees. [Citation.] The prosecution may seek a jury finding that an attempted murder was 'willful, deliberate, and premeditated' for purposes of sentence enhancement. [Citations.]" (*People v. Smith* (2005) 37 Cal.4th 733, 740.) A killing or attempted killing is premeditated and deliberate "if it occurred as the result of preexisting thought and reflection rather than unconsidered or rash impulse." (*People v. Stitely* (2005) 35 Cal.4th 514, 543.) "'Deliberation'" refers to "careful weighing of considerations in forming a course of action" and "'premeditation'" means "thought over in advance. [Citations.]" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) The process of premeditation and deliberation does not require any extended period of

time. (*People v. Cook* (2006) 39 Cal.4th 566, 603.) "'The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly. . . .'" (*People v. Mayfield* (1997) 14 Cal.4th 668, 767.)

"Review on appeal of the sufficiency of the evidence supporting the finding of premeditated and deliberate murder [or attempted murder] involves consideration of the evidence presented and all logical inferences from that evidence . . . ." (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.) "The standard of review is the same in cases . . . where the People rely primarily on circumstantial evidence." (*Ibid*.) "'[I]t is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'" (*Ibid*.)

The Supreme Court has "distilled certain guidelines to aid reviewing courts in analyzing the sufficiency of the evidence to sustain findings of premeditation and deliberation": "(1) planning activity, (2) motive, and (3) manner of killing." (*People v. Perez, supra*, 2 Cal.4th at p. 1125.) "'Analysis of the cases [shows] that [the Supreme Court] sustains verdicts of first degree murder typically when there is evidence of all three types and otherwise requires at least extremely strong evidence of (1) or evidence of (2) in conjunction with either (1) or (3).'" (*Ibid*., quoting *People v. Anderson* (1968) 70 Cal.2d 15, 27.) However, these facts, "while helpful for purposes of review, are not a sine qua non to finding first degree premeditated murder, nor are they exclusive." (*People v. Perez, supra*, at p. 1125.)

Appellant contends there was no evidence of planning or motive to support the finding of premeditation. We disagree. Sanchez testified that he and his friends were standing near the street when the assailants' car drove by the first

time, with the driver's side closest to where the three were standing. When the vehicle came back, it was turned around so that the passenger side was nearest the three victims and the passenger windows were down. As the vehicle drew up to where the men were located, the passengers immediately opened fire. The jurors could reasonably conclude that the occupants of the vehicle spotted the three men together in the area, drove away, and formulated a plan to return and shoot them during the several minutes the vehicle and its occupants were out of the victims' sight. The fact that the vehicle returned in a position to facilitate the shootings, with both passenger windows down, and that two occupants clearly had their guns drawn and ready to fire, supported the finding of premeditation. (See *People v. Caro* (1988) 46 Cal.3d 1035, 1050 [evidence that defendant armed himself before driving to area where killing occurred supported premeditation].)

With respect to motive, there is no need to establish motive where the evidence of planning is clear. (*People v. Perez, supra*, 2 Cal.4th at p. 1125.) Moreover, the fact that appellant was a dedicated member of an African-American gang, that the victims were Hispanic, and that the area was on the border of territory claimed by Front Street Crips and one of its primary rivals is sufficient to support that appellant had a motive for the shootings. (See *People v. Rand* (1995) 37 Cal.App.4th 999, 1001-1002 [evidence that defendant intended to shoot rival gang member or anyone wearing rivals' colors supported premeditation]; *People v. Francisco* (1994) 22 Cal.App.4th 1180, 1192 [motive supported by fact that defendant's gang and gang that controlled area where shooting took place were rivals].)

2. *Gang Allegation*

Section 186.22, subdivision (b)(1)(C), the gang allegation charged against appellant, imposes additional punishment for "any person who is convicted of a

felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members." Appellant does not dispute that evidence was presented to establish that the shootings were committed in association with Mormon, a fellow Front Street Crips gang member. (See *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1332 [evidence that defendant knowingly committed charged crimes in association with fellow gang member sufficient to support gang allegation].) However, he contends that the jury's acquittal of Mormon precludes consideration of that evidence to support the gang allegation. Having presented no evidence of the identity or gang membership of the third individual in the car, appellant contends that the prosecution failed to establish he acted "'in association'" with fellow gang members.

To the extent the jury's acquittal of Mormon was inconsistent with its conviction of appellant, "'a jury may make inconsistent findings or verdicts as to a defendant charged with two offenses. An acquittal on one offense will not invalidate a verdict on a second offense, although the two verdicts are factually inconsistent.'" (*People v. Pettaway* (1988) 206 Cal.App.3d 1312, 1324; *People v. Nunez* (1986) 183 Cal.App.3d 214, 226, disapproved in part on other grounds, in *People v. Palmer* (2001) 24 Cal.4th 856.) "'This rule is based on the realization that inconsistent findings may be caused simply by the mercy or leniency of the jury.'" (*People v. Pettaway*, *supra*, 206 Cal.App.3d at p. 1324; accord, *People v. Lopez* (1982) 131 Cal.App.3d 565, 571.) The evidence that appellant was the shooter was substantially stronger than the evidence that Mormon was the driver. Sanchez gave a physical description of one the gunmen and positively identified appellant from a photo spread. In contrast, Sanchez initially told police officers he could not describe the driver because he got a good look only at the passengers. When shown the six-pack containing Mormon's photograph months after the

shootings, Sanchez could say only that Mormon "look[ed] like the driver," and Sanchez was never able to identify Mormon's car as the vehicle. Unlike appellant, Mormon was not found in possession of a weapon used in the shooting, and no physical evidence tied him to the crime. Based on the discrepancies in the strength of the cases against the respective co-defendants, the jury could well have decided to be lenient. Moreover, because Mormon was not identified as a shooter, the jury might not have been convinced that even if present, he shared appellant's murderous intent. Because substantial evidence indicated that appellant committed the offenses in association with Mormon despite Mormon's acquittal, the gang allegation was supported.

Further, even if the evidence was insufficient to support that appellant committed the crime in association with Mormon, substantial evidence supported that the shootings benefited the gang. "[B]enefit" as it relates to section 186.22 is properly defined as "anything contributing to an improvement in condition, advantage, help, or profit." (*In re Alberto R.* (1991) 235 Cal.App.3d 1309, 1322.) To support a true finding under section 186.22, "the record must provide some evidentiary support, other than merely the defendant's record of prior offenses and past gang activities or personal affiliations, for a finding that the crime was committed for the benefit of, at the direction of, or in association with a criminal street gang." (*People v. Martinez* (2004) 116 Cal.App.4th 753, 762, italics omitted.) As discussed by gang expert Detective Shear, a shooting can benefit a gang even if the victims are not rival gang members by enhancing the gang's reputation, enhancing the shooter's personal reputation, intimidating the members of any other gang that might encroach on gang-claimed territory, and intimidating civilians living in the area. (See, e.g., *People v. Vazquez* (2009) 178 Cal.App.4th 347, 354 [murder of non-gang member benefited defendant's gang because "violent crimes like murder elevate the status of the gang within gang culture and

intimidate neighborhood residents who are, as a result, 'fearful to come forward, assist law enforcement, testify in court, or even report crimes that they're victims of for fear that they may be the gang's next victim or at least retaliated on by that gang. . . .'"; such fear and intimidation "obviously, makes it easier for the gang to continue committing the crimes for which it is known, from graffiti to murder"]; *People v. Romero* (2006) 140 Cal.App.4th 15, 19 [gang allegation supported where shooting by Latino gang member occurred in African-American gang territory and expert testified that shootings of African-American men benefited Latino gang by elevating status of shooters and their gang].)

Citing *People v. Ochoa* (2009) 179 Cal.App.4th 650, 657, appellant contends that "'[a] gang expert's testimony alone is insufficient to find an offense gang related.'" More recently, however, the Supreme Court has stated: "Expert opinion that particular criminal conduct benefited a gang by enhancing its reputation for viciousness can be sufficient to raise the inference that the conduct was 'committed for the benefit of . . . a[] criminal street gang' within the meaning of section 186.22 (b)(1)." (*People v. Albillar* (2010) 51 Cal.4th 47, 63.) In *People v. Galvez* (2011) 195 Cal.App.4th 1253, 1261-1262, the court cited *Albillar* in rejecting the defendant's assertion that the gang expert's testimony explaining how a public beating of a witness benefited the gang was insufficient to support a gang enhancement. In any event, here, the evidence that the shootings benefited the gang was not limited to expert testimony. Although the assailants did not issue gang challenges, the evidence established that appellant was a committed gang member, frequently observed with fellow Front Street Crips members. He had multiple gang tattoos which were visible even when he was fully clothed. Moreover, the crime took place in disputed territory, one block from the area claimed by Front Street Crips. The nature of the crime and the manner in which it was committed also supported its relationship to gang membership, as there was no

evidence of any personal animosity between appellant and the victims. When appellant was arrested in possession of one of the weapons used in the shooting, he flashed a Front Street Crips gang sign. This evidence, without regard to Detective Shear's testimony, supported the jury's finding that the gang allegation was true.

B. *Self-Representation*

Appellant was convicted on July 29, 2011. The sentencing hearing was set for August 4, 2011. At the beginning of the sentencing hearing, defense counsel stated that appellant wished to represent himself in sentencing and in presenting a motion for a new trial. The court denied the request, stating: "We're in the middle of our trial. He . . . was convicted by a jury; he hasn't yet been sentenced. . . . It's untimely. . . ." Appellant contends the court erred in denying his request.

A criminal defendant has an absolute right under the Sixth and Fourteenth Amendments to represent himself at trial. (*Faretta v. California* (1975) 422 U.S. 806, 807.) "The right of self-representation is absolute, but only if a request to do so is knowingly and voluntarily made and if asserted a reasonable time before trial begins. Otherwise, requests for self-representation are addressed to the trial court's sound discretion." (*People v. Doolin* (2009) 45 Cal.4th 390, 453.) In exercising its discretion to decide whether to grant an untimely motion, "the trial court shall inquire sua sponte into the specific factors underlying the request thereby ensuring a meaningful record in the event that appellate review is later required. Among other factors to be considered by the court in assessing such requests . . . are the quality of counsel's representation of the defendant, the defendant's prior proclivity to substitute counsel, the reasons for the request, the length and stage of the proceedings, and the disruption or delay which might reasonably be expected to follow the granting of such a motion." (*People v. Windham* (1977) 19 Cal.3d 121, 128 (*Windham*).)

For purposes of determining the timeliness of a motion for self-representation, the sentencing hearing is considered "a proceeding separate and distinct from the trial." (*People v. Miller* (2007) 153 Cal.App.4th 1015, 1023-1024.) It follows that a defendant who was represented by counsel at trial has an absolute right to represent him or herself at the sentencing hearing -- if the assertion is timely made. (*Ibid*.) The Supreme Court has held that a request made on the day of the sentencing hearing is untimely. (*People v. Doolin*, *supra*, 45 Cal.4th at pp. 454-455.)

As appellant's request for self-representation made on the day of the sentencing hearing was untimely, whether to grant or deny was in the trial court's discretion based on consideration of the *Windham* factors. The trial court denied the request, but without inquiring further or expressly addressing the *Windham* factors. In this situation, we may infer the court considered those factors if evidence of the factors appears in the record and supports the court's decision to deny the self-representation request. (*People v. Scott* (2001) 91 Cal.App.4th 1197, 1206; *People v. Perez* (1992) 4 Cal.App.4th 893, 904.) Here, the record reflects that prior to trial, appellant had requested and received permission to represent himself. A month later, he asked to have counsel reappointed. Appellant thus demonstrated a proclivity for requesting self-representation without proper reflection on the inherent difficulties, leading to unnecessary delay. The record further reflects the manner in which counsel conducted himself at trial and at the sentencing hearing. There is nothing to suggest that counsel was incompetent. Appellant gave no reason for seeking self-representation other than trial counsel's refusal to file a motion for new trial. But appellant has never suggested a viable ground for a new trial motion. Moreover, accommodating appellant's desire to file a new trial motion would have required a continuance of the sentencing hearing,

leading to disruption and delay. Accordingly, the record supports the denial of the motion.

Additionally, even were we to conclude that the court erred in denying the motion without conducting a *Windham* analysis, improper denial of a defendant's untimely request for self-representation at a sentencing hearing is reviewed under the harmless error standard: we reverse only if we are convinced it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. (*People v. Rivers* (1993) 20 Cal.App.4th 1040, 1050.) We are not so convinced. "It is candidly recognized that a defendant who represents himself virtually never improves his situation or achieves a better result than would trained counsel." (*Id*. at p. 1051.) Appellant's request came after his conviction, just prior to the court's pronouncement of sentence. Counsel argued against doubling the statutory seven year to life sentence for attempted murder and in favor of concurrent sentencing. He also argued against a finding that factors in aggravation existed beyond the nature of the crime. There appear to be no other arguments appellant could have made or strategies he could have implemented on his own behalf to obtain a lesser sentence. Accordingly, any error was harmless.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.