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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. NORVALLE MAURICE WILLIS, Defendant and Appellant.	B267863 (Los Angeles County Super. Ct. No. TA136041)

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

William L. Heyman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., Connie H. Kan, and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

Norvalle Maurice Willis appeals from the judgment entered following his conviction on two counts of attempted voluntary manslaughter and one

count of possession of a firearm by a felon. Appellant raises two issues on appeal. First, he contends he was denied his due process right to an impartial trial judge. Second, he contends his sentence violates federal and state prohibitions against cruel and/or unusual punishment. We find neither claim meritorious and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. *Prosecution Evidence*

A. *The Shooting*

On November 21, 2014, around 6:00 p.m., Sarah Brown was hosting a birthday party at her home for her daughter Ciarah Anthony, who was turning 16. Malajia Wilson, Ciarah's cousin, saw appellant, his girlfriend Jeanette Bell, and several other girls arrive at the party sometime after 8:30 p.m. Appellant had a gold grill over his teeth and a tattoo between his eyebrows. Wilson had never seen appellant or his girlfriend before.

Around 9:50 p.m., Brown's granddaughter, Kevinisha Jackson, called Andrea Harris, who was Jackson's mother and Anthony's older sister, and asked Harris to come home because there were so many people at the party. When Harris arrived, she accidentally stepped on Bell's foot. Harris apologized, but Bell became angry. Harris told everyone at the party to leave. Appellant pulled out a gun and said, "I don't have to go nowhere." Jackson heard appellant saying "Fruit Town Piru," the name of a gang.

Harris asked to speak with appellant outside, so she, her brother, and appellant walked outside. Harris told appellant this was a kid's party and there was no need for guns.

Antoinette Tillman, Wilson's mother, saw Bell walk out of the house and say, "My nigga don't talk, he shoot." Brown went outside and tried to calm Bell down.

Jackson told Bell that Brown was her grandmother, and then Jackson and Bell started fighting. When Brown tried to break up the fight, appellant shot her in the stomach and the shoulder. Harris saw Brown lying on the ground in a pool of blood.

When Jackson tried to check on Brown, Bell told appellant, "shoot that bitch," referring to Jackson. Jackson saw appellant lift the gun, so she turned and started to run away, but appellant shot her in the back. Harris told appellant he had shot her mother and her daughter. Appellant pointed the gun directly at Harris, who closed her eyes and grabbed her mother but did not hear the gun click.

Wilson was outside fighting with two girls. Appellant shot toward Wilson but did not hit her. Bell said, "Come on. He shot them. Let's go." Bell and appellant got in a car and drove away.

B. *Sheriff's Investigation*

Los Angeles County Sheriff's Department Deputy Raul Ibarra showed six-pack photographic lineups to Brown, Tillman, Jackson, Harris, and Wilson, and they all independently identified appellant. Brown also identified Bell.

Appellant was arrested under a different name on November 28, 2014 on an unrelated charge, and Bell was arrested on December 9, 2014.

C. *Gang Evidence*

Deputy Salvador Estrada came into contact with appellant in October 2014. Deputy Estrada filled out a field identification card indicating that appellant was a member of the Fruit Town Piru gang, based on appellant's admission, tattoos and clothing. Appellant had a "P" tattooed on his forehead, which Deputy Estrada said stood for "Piru."

Deputy Eric Gomez testified for the prosecution as a gang expert. He testified about gang culture in general and specifically about the Fruit Town Piru gang and appellant. Given a hypothetical based on the facts of this case, he opined that the shootings were committed for the benefit of the Fruit Town Piru gang.

II. *Defense Evidence*

Martin Flores testified as a gang expert for the defense. He testified that shooting at an innocent child or a woman is frowned upon in a gang and could harm the gang. Flores opined that the shootings were not committed for the benefit of the gang because the gang member was accompanied by non-gang members and the victims were not gang members.

Asha Muhammad attended the party with Bell, appellant, and others. She testified that other people started fighting with her and her friends, and that she did not hear Bell yell to shoot anyone.

Appellant testified in his own defense that he was not a gang member and that the "P" tattoo on his face stood for his sister's name, Patricia. He denied trying to kill anyone the night of the shooting, stating that he had never shot that gun before and threw it in the ocean after the incident.

Appellant had not wanted to go to the party because there had been a shooting near there a few days prior and because he had "a bad history with

house parties." He tried to convince Bell not to go, but when she insisted on going, he decided to go with her to protect her.

According to appellant, he wanted to leave the party when he saw a woman "talking crazy" to Bell, but as they were leaving, people started shoving him and "talking mess" to him. He testified that he just wanted to go home, but the people in the house wanted to argue with him. Appellant denied saying "Fruit Town."

Appellant was afraid because he had been jumped at a party before, so he drew out his gun. When he got outside, someone grabbed his arm and reached for the gun. Appellant saw people beating up Bell, so he fired his gun at their legs, but they did not stop. He testified that the people beating Bell up were much bigger than her and could have killed her. When they did not stop beating Bell, he shot two more times, saw someone fall, panicked, and ran to his car.

III. *Rebuttal Evidence*

Deputy Ibarra testified that when he interviewed appellant about the shooting, appellant claimed to know nothing about it. When Deputy Ibarra showed appellant the six-pack lineups identifying him as the perpetrator, appellant became very quiet, asked Deputy Ibarra how much his bail would be, and said he did not want to talk any more. Deputy Ibarra further testified that he had watched a video that appeared to depict appellant being "jumped into the gang."

IV. *Procedural Background*

Appellant was charged with four counts of attempted murder (Pen. Code, §§ 664/187, subd. (a))[1] and one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)). The information contained firearm and gang allegations (§§ 12022.53, 186.22) and alleged that appellant had served a prior prison term (§ 667.5, subd. (b)).

The jury found appellant not guilty of counts 3 and 4, attempted murder of Wilson and Harris, guilty of counts 1 and 2, the lesser included offenses of attempted voluntary manslaughter of Brown and Jackson (§§ 664/192, subd. (a)), and guilty of count 5, the firearm possession count. As to counts 1 and 2, the jury found the gang allegations not true and found true the firearm allegations under section 12022.53. The trial court found the prior prison term allegation true.

The court sentenced appellant to a total of 19 years 6 months in state prison.[2] Appellant filed a timely notice of appeal.

DISCUSSION

I. *Disqualification of Judge Hunter*

Appellant contends he was denied his due process right to an impartial judge. We conclude that appellant has provided no evidence to support his contention.

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[1] Further unspecified statutory references are to the Penal Code.

[2] The trial court mistakenly stated the total term was 19 years 10 months, but the minute order and abstract of judgment correctly note that it is 19 years 6 months.

A. *Relevant Proceedings*

On July 28, 2015, the first day of trial, defense counsel told the trial court judge, Eleanor Hunter, that appellant's mother, Luz Mercado, had told him that her daughter, Patricia Bellows, was a defendant before Judge Hunter in 2011. Mercado told defense counsel that when Bellows was found not guilty, the court "made a statement to her that her daughter got off but any other kids . . . are not going to be so lucky." The court replied, "That's ridiculous. I want to get her under oath." The court observed that Mercado previously had approached two witnesses at appellant's preliminary hearing and told them to go easy on appellant and that the court had admonished Mercado to sit down and be quiet.

The following day, defense counsel filed a peremptory challenge to Judge Hunter under Code of Civil Procedure section 170.1, based upon a declaration by Mercado. Mercado stated that Bellows was tried and acquitted of criminal charges before Judge Hunter in May 2011. According to Mercado, when the not-guilty verdicts were read, she started crying. Judge Hunter allegedly stated, "I'm tired of you. The next time you or any of your kids come into my courtroom, you're not going to be so lucky." Mercado further declared that Judge Hunter told Bellows, "The next time you're in my courtroom I will give you life."

On July 30, 2015, the trial court stated that it would continue to proceed with the trial but refer the disqualification motion to another court. Judge Hunter further stated that she had no recollection of Bellows, noting that she had handled hundreds of cases since 2011. Judge Hunter also noted that when she admonished Mercado to sit down during appellant's proceedings, she did not know that Mercado was appellant's mother.

Judge Hunter examined the transcripts and her notes from Bellows' trial. Mercado had approached the alleged victim in Bellows' trial to persuade the victim not to testify and had offered to pay for damage to the vehicle caused by gunshots. Judge Hunter then read from the transcript of Bellows' trial, which indicated that she never made the statements attributed to her by Mercado.

On August 3, 2015, Judge Hunter filed an order striking the statement of disqualification under Code of Civil Procedure section 170.4, subdivision (b).[3] She attached several documents, including a verified answer and the transcript from Bellows' trial. The transcript indicated that after admonishing Mercado for being "inappropriate" during the trial, Judge Hunter spoke as follows to Bellows: "Ms. Bellows, I guess I'll give you the speech. Obviously, you got lucky in this case because you had an credible [*sic*] attorney and the evidence really favored you in this case. [¶] But if you keep on going down the path that you are going, you're either going to be dead or you're going to be right back in this seat. And, you know, you only get lucky once. [¶] So this might be a sign from whatever god you might want to worship, or, even if you don't, it's a sign from something that, if you want to go ahead and play that tough gangster thing, it's going to come back and bite you. [¶] Please, I hope and pray I never see you again. All right? Stay out of trouble." Judge Hunter added, "if I ever hear that anything is going on with any of these witnesses that testified, you will be looked at first. . . . [¶] You and your brother . . . [¶] and your mom."

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[3] The statute provides that "if a statement of disqualification is untimely filed or if on its face it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken." (Code Civ. Proc., § 170.4, subd. (b).)

On August 13, 2015, appellant filed a petition for writ of mandate challenging the court's order striking the statement of disqualification. We denied the petition.

B. *Analysis*

"The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." (Code Civ. Proc., § 170.3, subd. (d).) Our Supreme Court has "repeatedly held [that] the statute means what it says: Code of Civil Procedure section 170.3, subdivision (d) provides the exclusive means for seeking review of a ruling on a challenge to a judge, whether the challenge is for cause or peremptory. [Citations.]" (*People v. Panah* (2005) 35 Cal.4th 395, 444.) However, "notwithstanding the exclusive-remedy provision of Code of Civil Procedure section 170.3, 'a defendant may assert on appeal a claim of denial of the due process right to an impartial judge.' [Citation.]" (*Id.* at p. 445, fn. 16.)

"'The Supreme Court has long established that the Due Process Clause guarantees a criminal defendant the right to a fair and impartial judge.' [Citation.] The operation of the due process clause in the realm of judicial impartiality, then, is primarily to protect the individual's right to a fair trial. In contrast to this elemental goal, a statutory disqualification scheme, like that found in our Code of Civil Procedure, is not *solely* concerned with the rights of the parties before the court but is also 'intended to ensure public confidence in the judiciary.' [Citation.] [Fn. omitted.] Thus, an explicit ground for judicial disqualification in California's statutory scheme is a public perception of partiality, that is, the appearance of bias. [Citations.]

"By contrast, the United State Supreme Court's due process case law focuses on actual bias. This does not mean that actual bias must be proven to establish a due process violation. Rather, consistent with its concern that due process guarantees an impartial adjudicator, the court has focused on those circumstances where, even if actual bias is not demonstrated, the probability of bias on the part of a judge is so great as to become "'constitutionally intolerable.'" [Citation.] The standard is an objective one." (*People v. Freeman* (2010) 47 Cal.4th 993, 1000–1001 (*Freeman*).) "The high court has emphasized that only the most 'extreme facts' justify judicial disqualification based on the due process clause. [Citation.]" (*People v. Peoples* (2016) 62 Cal.4th 718, 788 (*Peoples*).)

Appellant has failed to demonstrate any probability of bias on the part of Judge Hunter. He contends that "[t]he various interactions" between Judge Hunter and Mercado and Bellows show Judge Hunter's bias, but there is no evidence whatsoever to support that contention. The transcript shows that Judge Hunter merely admonished Bellows to "stay out of trouble" and did not threaten to give Bellows "life" if she appeared before her again. Appellant's speculation that Judge Hunter may have made other statements to Bellows not reported in the transcript is merely that – speculation.

Appellant further attempts to rely on Judge Hunter's conduct in his own trial, but the court's admonishment of appellant not to turn around and look at the audience was entirely appropriate. Nor was there anything improper about the court's exercise of its discretion to exclude Mercado from appellant's trial, which was based on Mercado's attempts to persuade witnesses not to testify.

This case is entirely unlike *Caperton v. A.T. Massey Coal Co., Inc.* (2009) 556 U.S. 868, where the Supreme Court "held that a justice on the

West Virginia Supreme Court of Appeal violated the defendant's due process rights by not recusing himself when the president of the defendant corporation, which had lost at trial, had donated $3 million to the justice's election campaign at a time when it was likely that the corporation would seek review in that court. [Citation.]" (*Peoples*, *supra*, 62 Cal.4th at p. 788.)

Appellant argues that Judge Hunter should have referred the matter to a different court to determine the question of disqualification, pursuant to Code of Civil Procedure section 170.3, which provides in subdivision (c)(5): "A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party. In that case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties." Even assuming appellant is correct, the fact that Judge Hunter struck the challenge after confirming that the record showed no evidence of bias establishes that the motion had no merit. Appellant has provided no evidence, let alone "'extreme facts'" that would establish bias by Judge Hunter. (*Peoples*, *supra*, 62 Cal.4th at p. 788.) We find no constitutional violation. (See *Freeman*, *supra*, 47 Cal.4th at p. 1005 [stating that the United States Supreme Court has "made it abundantly clear that the due process clause should not be routinely invoked as a ground for judicial disqualification. Rather, it is the exceptional case presenting extreme facts where a due process violation will be found."].)

II. *Cruel and/or Unusual Punishment*

Appellant contends his 19 year 6 month sentence constitutes cruel and/or unusual punishment in violation of the federal and state constitutions. He argues that he had turned 19 only six weeks before the incident and that

the jury convicted him of the lesser offense of attempted voluntary manslaughter, not attempted murder. Appellant further cites his prior bad experiences at a house party, his desire to protect Bell, and his fear he was going to be jumped. He also contends he did not initiate the altercation.

A. *Sentencing Proceedings*

On count 1, the trial court selected the high term of 5 years 6 months, citing the following reasons: appellant's "increasing nature of criminal conduct, the increasing violence of that conduct, his history on probation has been poor, and the victims were particularly vulnerable." The court then purported to impose a firearm allegation under section 12022.53, subdivision (b), which was the statutory section relied upon in the information and the verdict forms. However, appellant points out and respondent concedes, that the firearm allegation of section 12022.53 does not apply to voluntary attempted manslaughter. (See § 12022.53, subd. (a) [enumerating the felonies to which the enhancement applies]; *People v. Fialho* (2014) 229 Cal.App.4th 1389, 1395 (*Fialho*) ["section 12022.53 applies to an enumerated list of felony offenses, which does not include voluntary manslaughter or attempted voluntary manslaughter."].) The trial court's reliance on section 12022.53 therefore was incorrect. The error, however, is harmless.

Fialho held that the prosecution is not required to include specific statutory references for enhancement allegations and that the trial court properly imposed the "lesser included enhancement" of section 12022.5 where the section 12022.53 enhancement did not apply to the defendant's convictions for voluntary manslaughter and attempted voluntary manslaughter. (*Fialho*, *supra*, 229 Cal.App.4th at pp. 1396-1399.) Here, the trial court did not rely on section 12022.5 but purported to choose the "high

term" under section 12022.53 in imposing a 10-year enhancement, citing the same reasons as it gave in choosing the high term on the base count. Section 12022.53, subdivision (b) does not have a range of terms but merely mandates the imposition of a 10-year consecutive term. (§ 12022.53, subd. (b).) However, section 12022.5, subdivision (a), which is the firearm enhancement that properly applies to attempted voluntary manslaughter, gives the court discretion to impose a 3, 4, or 10 year term. (§ 12022.5, subd. (a).) Because the record reflects the trial court's intent to impose a 10-year enhancement, and it properly could do so under section 12022.5, the court's mistake was harmless. However, we shall order the abstract of judgment to be modified to reflect the correct enhancement.

On count 2, the court imposed one-third of the mid term of 3 years, plus 16 months on the firearm allegation, again under section 12022.53, subdivision (b) and on count 5, the court imposed one-third of the mid term of 24 months. The court also imposed a one year consecutive term for the prior prison term under section 667.5.

B. *Analysis*

"Article I, section 17 of the California Constitution prohibits infliction of '[c]ruel or unusual punishment.' A sentence may violate this prohibition if "'it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.'" [Citation.]" (*People v. Em* (2009) 171 Cal.App.4th 964, 972.) Unlike the California Constitution, which prohibits cruel *or* unusual punishment, the Eighth Amendment of the United States Constitution prohibits the imposition of cruel *and* unusual punishment. (U.S. Const., 8th Amend.; see *People v. Carmony* (2005) 127 Cal.App.4th 1066, 1085 (*Carmony*) [explaining

that the distinction "is purposeful and substantive rather than merely semantic"]. "The touchstone in each is gross disproportionality. [Citations.] Whether a punishment is cruel and/or unusual is a question of law subject to our independent review, but underlying disputed facts must be viewed in the light most favorable to the judgment. [Citations.]" (*People v. Palafox* (2014) 231 Cal.App.4th 68, 82-83.)

""""To determine whether a sentence is cruel or unusual under the California Constitution as applied to a particular defendant, a reviewing court must examine the circumstances of the offense, including motive, the extent of the defendant's involvement in the crime, the manner in which the crime was committed, and the consequences of the defendant's acts. The court must also consider the personal characteristics of the defendant, including his or her age, prior criminality, and mental capabilities. [Citation.] If the penalty imposed is 'grossly disproportionate to the defendant's individual culpability' [citation], so that the punishment ""shocks the conscience and offends fundamental notions of human dignity"" [citation], the court must invalidate the sentence as unconstitutional." [Citation.]' [Citation.]" (*People v. Abundio* (2013) 221 Cal.App.4th 1211, 1218 (*Abundio*).) "A defendant must overcome a considerable burden to show his sentence is disproportionate to his level of culpability, and findings of disproportionality are exquisitely rare in case law. [Citation.]" (*People v. Bell* (2016) 3 Cal.App.5th 865, 873; see also *Carmony*, *supra*, 127 Cal.App.4th at p. 1072 ["It is a rare case that violates the prohibition against cruel and/or unusual punishment."].) We conclude that appellant's sentence violates neither the federal nor the state constitution.[4]

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[4] We need not discuss respondent's argument that appellant forfeited this claim by failing to raise it in the trial court because we reject the claim on its merits. (See *People*

It is true that the jury convicted appellant of attempted voluntary manslaughter rather than attempted murder and thus appeared to have believed appellant's testimony that he did not intend to kill or that he shot because he feared for his safety. Nonetheless, the circumstances of the offense, the extent of appellant's involvement, the manner in which the offense was committed, and the consequences of appellant's actions amply support the sentence imposed by the trial court. (See *Abundio*, *supra*, 221 Cal.App.4th at p. 1218.)

As the trial court reasoned in imposing sentence, appellant initiated the altercation when he responded to Harris' request to leave the party by drawing a weapon and proclaiming the name of his gang. Appellant shot Brown at close range in the stomach and shoulder when she tried to break up the fight between Jackson and Bell, and he shot Jackson in the back as she tried to run away from him. Appellant's response to his alleged fear therefore was to shoot a woman at close range and a girl in the back as she ran away. The circumstances of the offense and the manner in which it was committed were sufficiently egregious to support the trial court's decision to impose the high term for the attempted voluntary manslaughter offense and the firearm enhancement.

The consequences of appellant's actions further support the sentence. Brown underwent two surgeries to remove the bullets from her stomach and her shoulder. She was hospitalized for eight days, and at the time of trial she continued to have severe pain and mobility issues. Jackson's lung was punctured by a bullet, requiring her to remain hospitalized for two to three days. She did not have surgery, and the bullet was still inside her at the time

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v. Speight (2014) 227 Cal.App.4th 1229, 1247 ["A defendant's failure to contemporaneously object that his sentence constitutes cruel and unusual punishment forfeits the claim on appellate review."].)

of trial. She had mobility issues for several months after the shooting, and her arm became numb when the weather was cold.

Nor does the fact that appellant had recently turned 19 years old support his argument. We previously have rejected defendants' attempts to argue that their sentences were cruel and/or unusual because, at 18 years of age, they were barely within the age of majority. (See *Abundio*, *supra*, 221 Cal.App.4th at pp. 1220-1221 [relying on our decision in *People v. Argeta* (2012) 210 Cal.App.4th 1478, to explain that, "'while "[d]rawing the line at 18 years of age is subject . . . to the objections always raised against categorical rules, [that] is the point where society draws the line for many purposes between childhood and adulthood." [Citations.] Making an exception for a defendant who committed a crime just five months past his 18th birthday opens the door for the next defendant who is only six months into adulthood. Such arguments would have no logical end, and so a line must be drawn at some point. We respect the line our society has drawn and which the United States Supreme Court has relied on for sentencing purposes . . . .' [Citation.]"].) Finally, as the trial court reasoned, appellant had prior involvement with the criminal justice system and his conduct was escalating in seriousness.

Appellant's sentence is not so grossly disproportionate to the nature of the offense or to his culpability as to shock the conscience or offend fundamental notions of human dignity. (*Abundio*, *supra*, 221 Cal.App.4th at p. 1218.) Therefore, his sentence is not cruel and/or unusual under the federal or state constitution.

III. *Ineffective Assistance of Counsel*

Appellant's final contention is that defense counsel rendered ineffective assistance of counsel, but he does not cite to the record to support his argument. We reject his contention.

"The standard for showing ineffective assistance of counsel is well settled. 'In assessing claims of ineffective assistance of trial counsel, we consider whether counsel's representation fell below an objective standard of reasonableness under prevailing professional norms and whether the defendant suffered prejudice to a reasonable probability, that is, a probability sufficient to undermine confidence in the outcome. [Citations.] A reviewing court will indulge in a presumption that counsel's performance fell within the wide range of professional competence and that counsel's actions and inactions can be explained as a matter of sound trial strategy. Defendant thus bears the burden of establishing constitutionally inadequate assistance of counsel. [Citations.] If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory explanation. [Citation.] Otherwise, the claim is more appropriately raised in a petition for writ of habeas corpus.' [Citation.]" (*People v. Gray* (2005) 37 Cal.4th 168, 206-207.)

"To succeed on his claim of ineffective assistance of counsel, defendant would have to show that his '(1) trial counsel failed to act in the manner to be expected of reasonably competent attorneys acting as diligent advocates and (2) it is reasonably probable that a more favorable determination would have resulted in the absence of counsel's failings.' [Citation.]" (*People v. Richardson* (2007) 156 Cal.App.4th 574, 596.) Appellant has made no such

showing and, in fact, does not cite any specific examples of trial counsel's alleged ineffective assistance. Moreover, the record sheds no light on any of the reasons for trial counsel's decisions, and trial counsel was not asked for any explanations.

DISPOSITION

The abstract of judgment shall be modified to reflect that the enhancements were imposed under section 12022.5, subdivision (a), rather than section 12022.53, subdivision (b). As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.