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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO LAGUNAS,

Defendant and Appellant.

B290761

Los Angeles County
Super. Ct. No. YA076975

APPEAL from a judgment of the Superior Court of Los Angeles County, Eric C. Taylor, Judge. Affirmed with directions.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Following his plea of no contest to carjacking committed for the benefit of a criminal street gang in which he personally used a firearm, defendant Antonio Lagunas was sentenced to an aggregate prison term of 25 years. Several years later, in response to a request for clarification of defendant's sentence from the Department of Corrections and Rehabilitation (Department), the court corrected defendant's original sentence and imposed an aggregate prison term of 24 years. Defendant appeals from the judgment imposing a lower aggregate sentence. After appellate counsel filed a brief in which he raised no issues and asked us to review the record independently under *People v. Wende* (1979) 25 Cal.3d 436, defendant submitted a supplemental brief raising a purported sentencing error. We have reviewed the entire record and defendant's supplemental brief and have found no arguable appellate issues. As our review of the record revealed errors in the sentencing minute order and abstract of judgment, however, we affirm with directions to correct those errors.

BACKGROUND

In accordance with a negotiated plea agreement, in March 2011, the court sentenced defendant to an aggregate state prison term of 25 years, consisting of 10 years for carjacking in violation of Penal Code¹ section 215 (the midterm of five years, doubled under the Three Strikes law for a prior carjacking juvenile adjudication), plus 10 years for the firearm allegation under

¹ All undesigned statutory references are to the Penal Code.

section 12022.53, subdivision (b), and an additional five years for the gang allegation under section 186.22, subdivision (b)(1)(B). The remaining count and allegations were dismissed. Notwithstanding the negotiated plea agreement, defendant appealed, contending the court erroneously denied his pretrial request to substitute one retained attorney for another. In January 2012, a different panel of this Division rejected that contention and affirmed the judgment. (*People v. Lagunas* (Jan. 23, 2012, B232187) [nonpub. opn.].)

In December 2017, the Department sent a letter to the trial court asking for clarification of defendant's sentence. According to the Department, since carjacking is a violent felony under section 667.5, subdivision (c), defendant should be punished by an additional 10 years, not five years, for the gang allegation. (See § 186.22, subd. (b)(1)(B) & (C).) As a result, defendant should have been sentenced to an aggregate state prison term of 30 years, not 25 years.

In response to the Department's letter, defendant was brought back to court on June 6, 2018, for resentencing. The court noted it had discussions in chambers with the prosecutor and defendant's attorney "about how to honor the plea agreement that came to a 25-year disposition." To correct the unauthorized portions of defendant's original sentence but not resentence him to an aggregate prison term greater than 25 years, the prosecutor agreed to amend the information by replacing the section 12022.53, subdivision (b), allegation attached to the carjacking count with an allegation under section 12022.5, subdivision (a). As a result of the amendment, defendant would be resentenced to an aggregate state prison term of 24 years, consisting of 10 years for carjacking in violation of section 215 (the midterm of five

years, doubled under the Three Strikes law), plus four years for the firearm allegation under section 12022.5, subdivision (a), and an additional 10 years for the gang allegation under section 186.22, subdivision (b)(1)(C).²

Defendant objected to resentencing because it was not the sentence he originally agreed to and “changed the Penal Code to the other gun enhancement[.]” Defendant also contended he would not have agreed to the prior plea agreement because the two prior strikes alleged in the information arose out of a single carjacking. The court overruled defendant’s objection and amended the information “nunc pro tunc.” The court then resentenced defendant to an aggregate state prison term of 24 years, consisting of 10 years for the carjacking count, plus four years for the firearm enhancement under section 12022.5, subdivision (a), and an additional 10 years for the gang enhancement under section 186.22, subdivision (b)(1)(C).

Defendant filed a timely notice of appeal.

DISCUSSION

Section 1170.1, subdivision (f), provides, “When two or more enhancements may be imposed for being armed with or using a dangerous or deadly weapon or a firearm in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for the

² The sentencing minute order and abstract of judgment erroneously state that the 10-year enhancement for the gang allegation was imposed under section 186.22, subdivision (b)(1)(B).

infliction of great bodily injury.” Misconstruing *People v. Rodriguez* (2009) 47 Cal.4th 501 (*Rodriguez*), defendant contends the court violated section 1170.1, subdivision (f), when it imposed both the gang enhancement and the firearm enhancement for his carjacking conviction.

In *Rodriguez*, the Supreme Court held that a defendant convicted of assault with a deadly weapon with true findings on the gang enhancement and personal-use enhancement was subject to one, but not both, of those enhancements. The Court explained that generally, the sentence enhancement for committing a felony to benefit a criminal street gang is two, three or four years’ imprisonment (§ 186.22, subd. (b)(1)(A)); however, the punishment is increased to 10 years when the crime is a violent felony as defined in section 667.5, subdivision (c). (See § 186.22, subd. (b)(1)(C); *Rodriguez, supra*, 47 Cal.4th at p. 509.) In *Rodriguez*, the defendant was subject to the 10-year gang enhancement under section 186.22, subdivision (b), only because of his use of the firearm, which made the underlying assault crime a violent felony. (§§ 186.22, subd. (b)(1)(C), 667.5, subd. (c)(8).) “Because the firearm use was punished under two different sentence enhancement provisions, each pertaining to firearm use, section 1170.1’s subdivision (f) require[d] imposition of ‘only the greatest of those enhancements’ with respect to each offense.” (*Rodriguez*, at p. 509.)

Here, in contrast, defendant’s crime of carjacking qualified for the violent felony gang enhancement irrespective of his firearm use. (See §§ 186.22, subd. (b)(1)(C), 667.5, subd. (c)(17).) Accordingly, his sentence was not enhanced twice for use of a firearm, and the court did not err in imposing both the firearm and the gang enhancements. (See *People v. Vega* (2013) 214

Cal.App.4th 1387, 1389 [distinguishing *Rodriguez* under similar circumstances].)

Finally, although the court imposed the 10-year gang enhancement under section 186.22, subdivision (b)(1)(C), the June 8, 2018, minute order and the June 12, 2018, abstract of judgment state, erroneously, that the gang enhancement was imposed under section 186.22, subdivision (b)(1)(B). Upon issuance of the remittitur, we direct the court to correct the minute order and the abstract of judgment to reflect that the gang enhancement was imposed under section 186.22, subdivision (b)(1)(C).

We have examined the entire record, and are satisfied appellate counsel has fully complied with his responsibilities and no arguable issues exist in the appeal before us. (*Smith v. Robbins* (2000) 528 U.S. 259, 278–284; *People v. Wende, supra*, 25 Cal.3d at p. 443.)

DISPOSITION

The judgment is affirmed. Upon issuance of the remittitur, the trial court is directed to correct the sentencing minute order and the abstract of judgment to reflect that the gang enhancement was imposed under section 186.22, subdivision (b)(1)(C), and to send a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.