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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ISRAEL SOTO,

Defendant and Appellant.

B229308

(Los Angeles County
Super. Ct. No. NA082701)

THE COURT:*

Israel Soto, also known as Fruto Tito and Paul Cruse, appeals from the judgment entered upon his conviction by jury of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(2), count 2).¹ The jury found to be true the personal use of a firearm allegation within the meaning of section 12022.5, subdivision (a) and the great bodily injury enhancement within the meaning of section 12022.7, subdivision (a). The trial court sentenced appellant to 17 years in state prison, consisting of the upper term of four years

* BOREN, P. J., ASHMANN-GERST, J., CHAVEZ, J.

¹ All further statutory references are to the Penal Code unless otherwise indicated.
The jury acquitted appellant of attempted murder in count 1.

for assault with a deadly weapon, plus three years for the great bodily injury enhancement and the upper term of 10 years for the firearm use enhancement.

Appellant's conviction was based upon the following facts:

In July 2009, appellant lived on West Arlington Street in Long Beach with family members and guests, Johnny Carranza (Carranza), an old friend of appellant, and Carranza's girlfriend, Jennifer Bradwell (known as Angel).

In the afternoon of July 21, 2009, Carranza and Angel were arguing, Carranza screaming at her. Later that evening, Carranza was throwing things at the walls. Appellant went into Carranza's room to attempt to calm him down. Carranza continued yelling and throwing things and then ran out of his room. Appellant followed him to the front yard, caught him, and they began fighting. Carranza was wrestled to the ground, appellant on top of him, punching him in the face. Carranza was laughing.

Appellant left the fight, went into the house and retrieved a gun, Carranza remaining on the ground. Appellant returned to the yard with a rifle and shot Carranza three times. A neighbor heard appellant yell, "Call the paramedics."

When arrested, appellant told the police that he had consumed alcohol with Carranza, but Carranza became angry and punched him. Appellant then became angry, "flipped out," and hit Carranza. Appellant retrieved a rifle from his room and shot Carranza three or four times. Appellant said that he shot him in the legs and shoulders because he did not want to kill him. He just wanted to stop him. Appellant's knuckles appeared scuffed, and he said that his face felt swollen in several areas, though the officers did not observe that.

Carranza suffered a bullet wound to the left of his heart, a second bullet wound to his right shoulder, and several gunshot wounds to the middle of both thighs. His spleen was removed in surgery. As a result, Carranza was required to receive regular vaccinations for the rest of his life.

In his defense, appellant introduced evidence of Carranza's history of substance abuse, mental illness and violent behavior, particularly when under the influence of drugs or alcohol. On the day of the charged incident, Carranza drank alcohol and took

methadone. As a result of his aggressive attitude, Carranza had been shot and stabbed numerous times in the past. Evidence was introduced of several incidents after the charged incident in which Carranza acted violently.

Appellant testified that he shot Carranza out of concern for his grandchildren, who were inside the house. He feared that Carranza, who had a key to the house, had armed himself with a handgun. Appellant therefore went to his room and retrieved his .22-caliber rifle, his least powerful gun, intending to disable Carranza. Appellant exited the house and shot Carranza in each shoulder. One shot hit Carranza lower on his chest than appellant intended because Carranza moved. Despite the shots, Carranza still tried to stand up and threatened to kill appellant. Appellant then stood over Carranza and shot him in the leg to prevent him from standing up.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an “Opening Brief” in which no issues were raised. On February 2, 2012, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider.

On June 5, 2012, and July 27, 2012, appellant filed two supplemental briefs, in which he presents no cogent legal claims, cites no legal authority and makes no references to the record. He simply rehashes his factual arguments, explaining that he was acting in self-defense or defense of others. He also argues that his sentence was too harsh, the judge profiled him because of his short hair and his looks, his offense should have been a misdemeanor and that his attorney improperly left on the jury a law teacher, who became the jury foreperson.

We begin by observing that to the extent we can distill any specific legal contentions in appellant’s briefs, they are stated without explication, without supporting argument, without any references to the record on appeal and without citation of authority. Points asserted on appeal without authority or argument will not be considered. (*People v. Wilkinson* (2004) 33 Cal.4th 821, 846, fn. 9; *People v. Stanley* (1995) 10 Cal.4th 764, 793; *People v. Williams* (1997) 16 Cal.4th 153, 250.)

To the extent appellant is challenging the propriety of his sentence, that claim lacks merit. He argued in the trial court that he should be given the low term of two years because he had no prior criminal record and the incident was “caused by the use of alcohol.” He also argued that he should be placed on probation as this is an “unusual case” because of his advanced age, health problems and lack of a criminal record. The trial court articulated several aggravating factors which, in the facts presented, the trial court felt “outweigh any mitigation that has been offered to this court.” We have reviewed those factors and find that they justified denial of probation and imposition of the upper term. The same factor may be used to both deny probation and support imposition of an upper term sentence. (*People v. Black* (2007) 41 Cal.4th 799, 817.) Only a single factor in aggravation is required to justify an upper term sentence. (*People v. Jones* (2009) 178 Cal.App.4th 853, 863, fn. 7.) Given the facts of the charged incident, the trial court’s sentence was within its broad discretion. (*People v. King* (2010) 183 Cal.App.4th 1281, 1323.)

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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