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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BULMARIO G. TORRES,

Defendant and Appellant.

B289519

(Los Angeles County
Super. Ct. No. BA204018)

APPEAL from an order of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed.

Bulmario G. Torres, in pro. per.; and Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

BACKGROUND

The Los Angeles County District Attorney's Office charged Bulmarío G. Torres (Torres) and his codefendants with second degree robbery (count 3), attempted second degree robbery (count 4), and attempted first degree murder (count 5). The district attorney also charged Torres with attempted first degree murder (count 6) as well as attempted second degree robbery (count 7). As to counts 5, 6, and 7, the district attorney alleged that Torres personally used a firearm. Further, as to counts 5 and 6, the district attorney alleged that Torres personally and intentionally discharged a firearm and personally and intentionally discharged a firearm, causing great bodily injury or death. As to count 6, the district attorney alleged that Torres personally inflicted great bodily injury.

Following trial, a jury convicted Torres of counts 3, 4, 6 and 7—robbery, attempted robbery, attempted murder and personal discharge of a firearm which inflicted great bodily injury, as well as attempted robbery with personal use of a firearm. The trial court sentenced Torres to serve 39 years and 4 months to life. Torres filed a notice of appeal and we appointed counsel to represent him. After examining the record, counsel filed an opening brief in which no issues were raised. We advised Torres that he had 30 days within which to submit any issues he wanted us to consider and he, in turn, submitted a handwritten letter brief in which he raised several issues, none of which had merit. We examined the record in its entirety, taking into account Torres's issues, and were satisfied that Torres's appellate counsel had complied with her duty, that substantial evidence supported each count, and that no arguable issue existed. Thus, on January

14, 2002, we affirmed the trial court judgment. (*People v. Torres* (Jan. 14, 2002, B148238) [nonpub. opn.].)

On March 26, 2010, Torres filed a motion in the trial court challenging the imposition of a \$5,000 restitution fine. The trial court denied the motion as both untimely and unmeritorious, and Torres appealed. After an examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. We advised Torres he had 30 days within which to personally submit any contentions or issues he wished us to consider but received no response. We then examined the entire record and confirmed that Torres's attorney had fully complied with her responsibilities and that no arguable issues existed. Thus, on February 4, 2011, we affirmed the trial court order. (*People v. Torres* (Feb. 4, 2011, B225424) [nonpub. opn.].)

On August 20, 2014, Torres filed a petition for habeas corpus. The trial court denied the petition as successive and untimely. The trial court also found that Torres should have received eight-month consecutive terms on counts 4 and 7, rather than six-month terms, and ordered that a new sentencing hearing take place. On January 4, 2016, the trial court modified Torres's sentence to include eight-month consecutive terms on counts 4 and 7, for a total sentence of 39 years and 8 months to life.

On March 15, 2018, Torres filed a motion entitled "SB 620 Motion for Resentencing Pursuant to Penal Code [Section] 1385." The trial court denied the motion because Torres's case had become final well before January 1, 2018. The trial court also reasoned that if it had discretion to grant the relief requested, it would not, because Torres had "joined two men to commit a series

of major felonies” and Torres “is a dangerous individual who deserves to serve the sentence imposed.”

Torres filed a timely notice of appeal on April 17, 2018. After examining the record, appointed counsel filed an opening brief raising no issues and asking that this court independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Counsel also advised Torres he had 30 days within which to personally submit any contentions or issues he wished us to consider. Torres filed a supplemental brief on September 17, 2018.

DISCUSSION

We have independently reviewed the record on appeal and are satisfied counsel fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

On October 11, 2017, the Governor signed Senate Bill No. 620, which became effective on January 1, 2018. (Stats. 2017, ch. 682, §§ 1 & 2.) As relevant to this case, Senate Bill No. 620 amended Penal Code sections 12022.5 and 12022.53, to give discretion to the trial court to strike a firearm enhancement in the interest of justice. Both sections now state: “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.” (Pen. Code, §§ 12022.5, subd. (c), § 12022.53, subd. (h).)

Senate Bill No. 620's amendments apply retroactively to cases not yet final on appeal. (*In re Estrada* (1965) 63 Cal.2d 740, 744 [if an amended statute "lessening punishment becomes effective prior to the date the judgment of conviction becomes final then . . . it, and not the old statute in effect when the prohibited act was committed, applies"].) However, as noted by the trial court, Torres's conviction was final well before January 1, 2018.¹ (See *People v. Vieira* (2005) 35 Cal.4th 264, 306 [when determining retroactive application of an amendment to a criminal statute, a judgment is final when the time for petitioning for a writ of certiorari in the United States Supreme Court has passed].) Furthermore, although the trial court could not strike any of Torres's firearm enhancements, the court still considered and addressed whether imposition of the enhancements under the facts and circumstances of this case would be in furtherance of justice pursuant to Penal Code section 1385. The trial court unequivocally stated that even if it had discretion under Senate Bill No. 620, it would not strike the enhancements in this case.

¹ As noted above, the trial court denied Torres's habeas petition on August 20, 2014. On October 23, 2017, United States District Court Judge Manuel L. Real denied and dismissed Torres's habeas petition with prejudice and denied Torres's request for a Certificate of Appealability. (See *Torres v. Sherman* (C.D. Cal. 2017, No. CV 17-2745-R(E)) 2017 WL 4862755, Documents 23 and 24.)

DISPOSITION

The order is affirmed.

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JOHNSON, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.