

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FLOYD ANTHONY JOHNSON,

Defendant and Appellant.

B296187

(Los Angeles County  
Super. Ct. No. BA385922)

THE COURT:

Floyd Anthony Johnson appeals an order of the superior court denying his request that the court exercise its discretion to strike the firearm enhancement imposed pursuant to Penal Code section 12022.53.<sup>1</sup>

On August 30, 2011, appellant pleaded no contest to two counts of second degree attempted robbery (§§ 664 & 211) and

---

<sup>1</sup> Undesignated statutory references are to the Penal Code.

admitted as true a firearm enhancement allegation under section 12022.53, subdivision (b). Appellant was sentenced in accordance with the plea agreement to 12 years in state prison, consisting of the low term of 16 months on count 1, plus 10 years for the firearm enhancement, and an additional 8 months on count 2.

On November 16, 2018, proceeding in pro. per., appellant filed a petition for resentencing under Senate Bill No. 620, requesting that the trial court exercise its discretion to strike or dismiss the firearm enhancement. The superior court denied the petition on January 8, 2019, finding that appellant is not entitled to relief because his sentence was based upon a negotiated disposition of the case.

Johnson appealed the trial court's ruling, and we appointed counsel to represent him on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record.

### **DISCUSSION**

The superior court had no jurisdiction to grant the relief appellant sought in his petition for resentencing, which he brought seven years after the judgment in his case became final. A judgment in a criminal case "is rendered when the trial court orally pronounces sentence," and "may consist of a fine, a term of imprisonment, or both." (*People v. Karaman* (1992) 4 Cal.4th 335, 344, fn. 9 (*Karaman*).) "'[O]nce a judgment is rendered, except for limited statutory exceptions (§§ 1170.126, 1170.18), the sentencing court is without jurisdiction to vacate or modify the sentence, except pursuant to the provisions of section 1170, subdivision (d). [Citation.] Section 1170, subdivision (d), allows a sentencing court on its own motion to recall and resentence, subject to the express limitation that the court must act to recall

the sentence within 120 days after committing the defendant to prison. [Citation.] Indeed, “the court loses ‘own-motion’ jurisdiction if it fails to recall a sentence within 120 days of the original commitment.” ’ ’ ” (*People v. Hernandez* (2019) 34 Cal.App.5th 323, 326 (*Hernandez*), quoting *People v. Fuimaono* (2019) 32 Cal.App.5th 132, 134.) In addition, “[u]nder the general common law rule, a trial court is deprived of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced. [Citations.] Where the trial court relinquishes custody of a defendant, it also loses jurisdiction over that defendant.” (*Karaman*, at p. 344; *People v. Antolin* (2017) 9 Cal.App.5th 1176, 1179, 1183.) In this case, the judgment was rendered on August 30, 2011. The superior court thus plainly lacked jurisdiction to strike the firearm enhancement or otherwise modify appellant’s sentence, the execution of which had begun long before appellant brought his petition for resentencing in the superior court. (*Karaman*, at p. 344.)

Further, although an appellate court may correct an unauthorized sentence at any time (*People v. Anderson* (2010) 50 Cal.4th 19, 26; *People v. Tua* (2018) 18 Cal.App.5th 1136, 1140 [“An unauthorized sentence is subject to correction when it comes to the attention of the reviewing court”]), this narrow exception to the waiver doctrine does not apply in this case. A sentence is “unauthorized” only if it “could not lawfully be imposed under any circumstance in the particular case.” (*People v. Scott* (1994) 9 Cal.4th 331, 354; *People v. Smith* (2001) 24 Cal.4th 849, 852). Here, appellant’s sentence was plainly authorized when it was imposed, and appellant agreed to it as part of the negotiated disposition of the case. “The rule that defendants may challenge an unauthorized sentence on appeal even if they failed to object

below is itself subject to an exception: Where the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process.” (*People v. Hester* (2000) 22 Cal.4th 290, 295; *People v. Couch* (1996) 48 Cal.App.4th 1053, 1057 [“When a defendant maintains that the trial court’s sentence violates rules which would have required the imposition of a more lenient sentence, yet the defendant avoided a potentially harsher sentence by entering into the plea bargain, it may be implied that the defendant waived any rights under such rules by choosing to accept the plea bargain”].)

Based on our examination of the entire record we are satisfied that defendant’s attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

---

LUI, P.J.

ASHMANN-GERST, J.

HOFFSTADT, J.