

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONARDO GARCIA,

Defendant and Appellant.

B284484

(Los Angeles County  
Super. Ct. No. PA070040)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden Zacky, Judge. Affirmed and remanded.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and John Yang, Deputy Attorney General, for Plaintiff and Respondent.

---

Leonardo Garcia, together with three codefendants, was convicted of first degree murder (count 1), attempted premeditated murder (count 2), two counts of shooting at an inhabited dwelling (counts 3 and 4), possession of a firearm by a felon (count 6), discharging a firearm with gross negligence (count 7) and street terrorism (count 8). In an initial appeal we reversed the convictions on counts 1 and 7, vacated Garcia's sentence in its entirety and addressed sentencing errors on counts 3, 4 and 8. We remanded for further proceedings and resentencing. (*People v. Gomez* (June 23, 2015, B251303) [nonpub. opn.].)

On remand the trial court reduced count 1 to second degree murder and resentenced Garcia at a hearing at which counsel for the People and Garcia were present, but Garcia was not. In a second appeal we held the trial court had violated Garcia's constitutional right to be present at the resentencing hearing and again remanded the case for resentencing. (*People v. Garcia* (Feb. 14, 2017, B270691) [nonpub. opn.].)

At a new sentencing hearing on August 3, 2017 the trial court imposed an aggregate indeterminate sentence of 120 years to life: 15 years to life for second degree murder plus an enhancement of 25 years to life for personal use of a firearm causing death pursuant to Penal Code section 12022.53, subdivision (d);<sup>1</sup> a consecutive term of 15 years to life for attempted premeditated murder committed for the benefit of, or in association with, a criminal street gang, plus 25 years to life for a firearm-use enhancement pursuant to section 12022.53, subdivision (d); a consecutive term of 15 years to life for shooting

---

<sup>1</sup> Statutory references are to this code.

at an inhabited dwelling committed for the benefit of, or in association with, a criminal street gang, plus 25 years to life for a firearm-use enhancement pursuant to section 12022.53, subdivision (d); and a concurrent term of seven years for possession of a firearm by a felon.<sup>2</sup> Following his resentencing Garcia filed a notice of appeal.

We appointed counsel to represent Garcia in his new appeal. After examination of the record counsel filed an opening brief in which no issues were raised. (See *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) On January 9, 2018 we advised Garcia he had 30 days within which to submit any contentions or issues he wished us to consider.

Although we received no response from Garcia, on May 31, 2018 we wrote Garcia's appellate counsel and the Attorney General explaining that this court, based on our review of the record, had identified the following issue: At the time of Garcia's sentencing imposition of firearm-use enhancements of 25 years to life on counts 1, 2 and 4 pursuant to section 12022.53, subdivision (d), was mandatory. In October 2017 the Legislature passed Senate Bill No. 620, which took effect on January 1, 2018. Section 12022.53, subdivision (h), now provides, "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."

---

<sup>2</sup> The court stayed the sentence as to counts 3 and 8 pursuant to section 654.

Section 12022.53, subdivision (h), as amended, applies retroactively to Garcia and other defendants whose sentences were not final before it came into effect. (E.g., *People v. Arredondo* (2018) 21 Cal.App.5th 493, 507; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1090-1091; see *People v. Brown* (2012) 54 Cal.4th 314, 323-324; *In re Estrada* (1965) 63 Cal.2d 740, 745.) Accordingly, we asked counsel to submit supplemental briefs addressing whether the case should be remanded to allow the trial court to determine whether to strike the firearm enhancements previously imposed under section 12022.53, subdivision (d).

Counsel for both parties have submitted supplemental letter briefs stating Garcia should be given a new sentencing hearing to permit the trial court to consider whether to strike the firearm enhancements pursuant to the discretion conferred by amended section 12022.53, subdivision (h).

### **DISPOSITION**

The matter is remanded to allow the trial court to conduct a new sentencing hearing to determine whether to exercise its discretion to strike the firearm enhancements previously imposed under section 12022.53, subdivision (d). In all other respects the judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.