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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA PABLO ROSALES,

Defendant and Appellant.

B236053

(Los Angeles County
Super. Ct. No. BA308417)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Leslie A. Swain, Judge. Affirmed as modified.

Derek K. Kowata, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Steven D.
Matthews, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

This case comes before us a second time. In August 2006, Pedro Flores was riding his bicycle away from defendant Joshua Pablo Rosales when defendant shot and killed him. A jury convicted defendant on one count of second degree murder (Pen. Code, § 187, subd. (a))¹ and one count of grossly negligent discharge of a firearm (§ 246.3) and found true the alleged firearm-use enhancements (§ 12022.53, subds. (b), (c) & (d)). The trial court sentenced defendant to an aggregate state prison term of 40 years to life. Defendant appealed, and this court reversed the conviction for second degree murder on the ground of instructional error relating to a theory of felony murder, but affirmed the conviction for grossly negligent discharge of a firearm. (*People v. Rosales* (Feb. 16, 2010, B210251) [nonpub. opn.].)

Following a retrial, a jury convicted defendant of second degree murder and found true the same firearm-use enhancements. The trial court sentenced defendant to an aggregate state prison term of 15 years to life for second degree murder, plus 25 years to life for the section 12022.53, subdivision (d) firearm-use enhancement. The court ordered the previously-imposed sentence for negligent discharge of a firearm to be served concurrently. On appeal, defendant contends the trial court should have stayed imposition of sentence for grossly negligent discharge of a firearm pursuant to section 654 and miscalculated his presentence custody credits. We affirm the judgment as modified.

DISCUSSION

1. Imposition of Sentence for Grossly Negligent Discharge of a Firearm Should Have Been Stayed Pursuant to Section 654

Section 654 prohibits separate punishment for multiple offenses arising from the same act or from a series of acts constituting an indivisible course of criminal conduct. (*People v. Rodriguez* (2009) 47 Cal.4th 501, 507; *People v. Latimer* (1993) 5 Cal.4th

¹ Statutory references are to the Penal Code.

1203, 1206.)² “Whether *a course of criminal conduct* is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses, but not for more than one.” (*Rodriguez, supra*, 47 Cal.4th at p. 507; accord, *People v. Lewis* (2008) 43 Cal.4th 415, 519.)

Generally, the trial court has broad discretion in determining whether a defendant had multiple criminal objectives independent of, and not merely incidental to, each other for purposes of section 654. On appeal we will uphold the court’s express or implied finding a defendant held multiple criminal objectives if it is supported by substantial evidence. (See *People v. Osband* (1996) 13 Cal.4th 622, 730-731; *People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

Defendant contends, the People acknowledge and we agree the trial court violated section 654 in failing to stay the sentence for grossly negligent discharge of a firearm. The evidence showed defendant’s only objective was to kill Flores in repeatedly firing his gun directly at him, as Flores was pedaling away. Accordingly, the grossly negligent discharge of a firearm offense arose out of the same indivisible course of conduct as the second degree murder offense, and the two crimes were incident to one objective.

2. Defendant Is Entitled to Additional Custody Credit Under Section 2900.5 for Time Spent in Actual Confinement

At his sentencing hearing, defendant was awarded 1,833 days of presentence custody credit. Defendant now asserts, and the People agree, the trial court miscalculated defendant’s presentence custody credit by omitting one day of the time he spent in actual confinement prior to the commencement of his sentence. As defendant acknowledges,

² Section 654, subdivision (a), provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.”

section 2933.2 prohibits anyone convicted of murder from receiving work time or conduct credits. In contrast, section 2900.5, subdivision (a), provides “[i]n all felony and misdemeanor convictions . . . all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment” (See *People v. Taylor* (2004) 119 Cal.App.4th 628, 646-647.) It is undisputed defendant spent 1,834 days in custody prior to sentencing, having been arrested on August 26, 2006, and sentenced on September 2, 2011. Therefore, defendant is entitled to one additional day of presentence custody credit.

DISPOSITION

The judgment is modified to stay the sentence on the conviction for grossly negligent discharge of a firearm and to correct the presentence custody credit from 1,833 days to 1,834 days. As modified the judgment is affirmed. The superior court is directed to prepare a corrected abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

WOODS, J.

We concur

PERLUSS, P. J.

ZELON, J.