

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

GILDARDO SALAZAR,

Defendant and Appellant.

B296799

(Los Angeles County
Super. Ct. No. KA110465)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert Martinez, Judge. Affirmed.

Law Offices of Allen G. Weinberg and Allen G. Weinberg,
under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL BACKGROUND

In the early hours of March 16, 2015, appellant Salazar shot and killed Ricardo Munoz, who was unarmed, shooting him in the back and torso six times. A jury acquitted Salazar of first degree murder, but found him guilty of second degree murder. (Pen. Code, § 187, subd. (a).)¹ It also found Salazar personally and intentionally used and discharged a firearm, proximately causing Munoz's death. (§ 12022.53, subds. (b), (c), (d).) The trial court sentenced Salazar to 40 years to life in prison, comprised of a term of 15 years to life for the murder, and 25 years to life for the section 12022.53, subdivision (d) firearm enhancement.

In an unpublished opinion filed on October 26, 2018, this court affirmed his conviction, but vacated his sentence and remanded the matter to allow the trial court to exercise its discretion and determine whether to strike or dismiss the firearm enhancements, pursuant to section 12022.53, subdivision (h). (*People v. Salazar* (B285318, Oct. 26, 2018) [nonpub. opn.])

On February 15, 2019, the trial court conducted a hearing on the question of whether to strike or dismiss the firearm enhancements. Salazar was present and represented by counsel, and the trial court heard arguments from the parties. The court expressly recognized that it had discretion to strike the enhancements. It noted that persons may discharge firearms in a variety of circumstances, implicitly suggesting that some circumstances indicate more culpability than do others. Here, the court reasoned, Salazar shot the victim multiple times in the back and chest, and the shooting stemmed from the victim's "disrespect" of Salazar. When he committed the murder, Salazar

¹ All further undesignated statutory references are to the Penal Code.

was “in possession of a firearm at a time that he was on parole for being a felon in possession of a firearm.” Accordingly, the court found there was “no circumstance” under which striking or dismissing any of the jury’s true findings would promote the interests of justice in Salazar’s case. The court reimposed the previous sentence of 40 years to life in prison.

Salazar filed a timely notice of appeal.

DISCUSSION

After review of the record, Salazar’s court-appointed counsel filed an opening brief that raised no issues, and requested that this court conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Appellant was advised that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We have received no response.

Effective January 1, 2018, the Legislature amended section 12022.53, subdivision (h), to give trial courts discretion to strike or dismiss section 12022.53 firearm enhancements “in the interest of justice pursuant to Section 1385.” When exercising its discretion, a trial court considers factors including the defendant’s rights, the interests of society, and individualized considerations pertaining to the defendant and his or her offenses and background. (*People v. Rocha* (2019) 32 Cal.App.5th 352, 359.) The denial of a motion to dismiss pursuant to section 1385 is reviewed for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376; *People v. Tirado* (2019) 38 Cal.App.5th 637, 642.) A trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it. (*Carmony*, at p. 376.) The party attacking the sentence has the burden to make such a showing; otherwise,

the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review. (*Id.* at pp. 376–377.) Here, the trial court considered appropriate factors, and no abuse of discretion is apparent.

We have examined the record, and are satisfied no arguable issues exist and Salazar’s attorney has fully complied with the responsibilities of counsel. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at pp. 441–442.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

EGERTON, J.

DHANIDINA, J.