

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

SALVADOR CASTRO  
HERNANDEZ,

Defendant and Appellant.

2d Crim. No. B280231  
(Super. Ct. No. 2011033571)  
(Ventura County)

Salvador Castro Hernandez appeals from the judgment imposed after his guilty plea. (Pen. Code,<sup>1</sup> § 1237, subd. (b); Cal. Rules of Court, rule 8.304(b)(4)(B).) The trial court sentenced him to nine years in state prison. We affirm.

We appointed counsel to represent Hernandez in this appeal. After counsel examined the record, he filed an opening brief that raised no arguable issues. We advised Hernandez that he had 30 days within which to personally submit any

---

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

contentions or issues he wished us to consider. Hernandez filed a supplemental letter brief in which he requests a different sentence.

Hernandez and his girlfriend were in his car at a fast food restaurant. Hernandez's girlfriend heard a bottle break. Hernandez thought someone had thrown a bottle at his car. He got out and pointed his gun at the two people in the car behind his. The driver got out and confronted Hernandez. Hernandez's gun discharged. The sound of the discharge damaged the driver's eardrum.

Hernandez pled guilty to two counts of assault with a semiautomatic firearm (§ 245, subd. (b)), and admitted two personal use of a firearm enhancements (§ 12022.5, subds. (a) & (d)) and one great bodily injury enhancement (§ 12022.7, subd. (a)). The trial court denied Hernandez's application for probation and sentenced him to nine years in state prison: three years for one of the assaults, a consecutive three years for the use of a firearm, and a consecutive three years for causing great bodily injury. The court imposed concurrent sentences for the remaining assault charge and firearm enhancement.

Hernandez contends this court should reconsider his nine-year prison sentence and impose a different sentence. But the sentence imposed for the assault charge and its attendant allegations was that prescribed by the Penal Code. (See §§ 245, subd. (b), 12022.5, subds. (a) & (d), 12022.7, subd. (a).) The sentence was significantly less than the maximum sentence set forth in the plea agreement. The trial court properly considered Hernandez's statement in mitigation, and did not find his would be an "unusual case[] where the interests of justice would best be served if [he were] granted probation." (§ 1203, subd. (e)(2) & (3);

see *In re Buckley* (1973) 10 Cal.3d 237, 257 [“The effect to be given to such a mitigating factor lies exclusively in the sound discretion of the trial judge.”].) Hernandez has not shown that the court abused its discretion. (*People v. Edwards* (1976) 18 Cal.3d 796, 807.)

We have reviewed the entire record and are satisfied that Hernandez’s attorney fully complied with his responsibilities and that no arguable issue exists. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Michael Lief, Judge

Superior Court County of Ventura

---

Richard B. Lennon, under appointment by the Court  
of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.