

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERT HENRY ANCHONDO,

Defendant and Appellant.

B291444

(Los Angeles County
Super. Ct. No. BA426662)

APPEAL from an order of the Superior Court of Los Angeles County, Charlaine F. Olmedo, Judge. Affirmed.

Robert H. Derham, 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, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Gilbert Henry Anchondo appeals from an order in which the trial court, on remand from this court, declined to exercise its newly-authorized discretion to strike a firearm enhancement pursuant to Penal Code section 12022.53, subdivision (h).¹ (Stats. 2017, ch. 682, § 2, eff. Jan. 1, 2018.) Anchondo does not challenge this order on appeal. Rather, he requests that we remand the case to permit the court to exercise its discretion whether to strike his prior serious felony conviction enhancements (§ 667, subd. (a)(1)) pursuant to Senate Bill No. 1393, which became effective January 1, 2019. Senate Bill No. 1393 amended section 1385 to permit a trial court to strike a prior serious felony conviction enhancement. We find no remand is required.

BACKGROUND

Anchondo shot and killed two men following an argument with one of the victims. The next day, police officers observed Anchondo driving a vehicle which belonged to one of the victims. When they attempted to stop him, Anchondo sped away. The police pursuit ended when Anchondo crashed into multiple vehicles, injuring the driver of one of the vehicles.

A jury convicted Anchondo of two counts of first degree murder (§ 187, subd. (a)) and one count of evading a peace officer causing serious bodily injury (Veh. Code, § 2800.3, subd. (a)). The jury found true the firearm allegations attached to the murder counts (§ 12022.53, subds. (b)-(d)) and the multiple murder

¹ Unless otherwise specified, all statutory references are to the Penal Code.

special circumstance (§ 190.2, subd. (a)(3)). The trial court found true the allegation that Anchondo suffered three prior strike convictions (§§ 667, subds. (b)-(j), 1170.12) including one prior serious felony conviction (§ 667, subd. (a)). On the murder counts, the trial court sentenced Anchondo to two consecutive terms of life without the possibility of parole, plus two consecutive terms of 25 years to life on the firearm enhancements and two consecutive five-year enhancements for the prior serious felony conviction. The court imposed a consecutive upper term of 14 years for the conviction of evading a peace officer.

On appeal, we affirmed Anchondo's convictions. However, we remanded the case with directions that the trial court hold a hearing to determine whether to strike the firearm use enhancements. (*People v. Anchondo* (Mar. 22, 2018, B283015) [nonpub. opn.])

At the hearing, the trial court noted that it “did sentence [Anchondo] consecutively at the time of sentencing so that is clear.” The court had found there were circumstances in aggravation: the crimes involved great violence; there was great bodily harm; Anchondo engaged in violent conduct and his prior convictions were numerous and increasing in seriousness; he had served prior prison terms; and he was on parole at the time he committed the crimes. The court had found no circumstances in mitigation.

The court added that while Anchondo's conduct in court had been “exemplary,” “the facts of this case are both violent and egregious in the way that it was conducted.” The court stated that “not only for the findings that I made at the time of sentencing pursuant to the Rules of Court but just the underlying facts of this case don't justify here the mitigation of having

concurrent sentences on the firearm enhancement. I don't think that is reflective of the conduct that was exhibited here and found by the jury to have been committed by Mr. Anchondo. So, in exercising my discretion, I'm not going to modify the sentence and make it concurrent."

DISCUSSION

Section 1385 provides the trial court with discretion to strike an enhancement in the furtherance of justice. At the time of sentencing, former subdivision (b) of that section provided: "This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667." Senate Bill No. 1393 deleted former subdivision (b). (Stats. 2018, ch. 1013, § 2.)

Senate Bill No. 1393 applies retroactively to Anchondo because the judgment in this case is not yet final. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973; see *People v. Brown* (2012) 54 Cal.4th 314, 319-324.) Where the trial court is unaware that it has the discretion to reduce a defendant's sentence, "[r]emand is required unless the record reveals a clear indication that the trial court would not have reduced the sentence even if at the time of sentencing it had the discretion to do so. [Citation.]" (*People v. Almanza* (2018) 24 Cal.App.5th 1104, 1110; see *People v. Gutierrez* (1996) 48 Cal.App.4th 1894, 1896 [remand unnecessary where "the trial court indicated that it would not, in any event, have exercised its discretion to lessen the sentence"].)

Anchondo argues a remand is required because (1) the court did not state on the record that it would not have exercised

its discretion to strike the enhancements even if it had discretion to do so; and (2) the fact the court chose not to exercise its discretion to strike the firearm enhancements does not compel a conclusion that it would also choose not to strike the prior serious felony enhancements. We disagree.

In denying Anchondo's request to strike the firearm enhancements, the trial court noted that it sentenced Anchondo consecutively because there were numerous circumstances in aggravation and no circumstances in mitigation. It characterized the facts of this case "both violent and egregious in the way that it was conducted." It found "the underlying facts of this case don't justify here the mitigation of having concurrent sentences on the firearm enhancement." These statements give a "clear indication" that the trial court would not have reduced Anchondo's sentence by striking his prior conviction, "even if at the time of sentencing it had the discretion to do so." (*People v. Almanza, supra*, 24 Cal.App.5th at p. 1110.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.