

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

HECTOR BUGARIN,

Defendant and Appellant.

B293527

(Los Angeles County
Super. Ct. No. PA044595)

APPEAL from a judgment of the Superior Court of Los Angeles County, David W. Stuart, Judge. Postjudgment order affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Hector Bugarin appeals from an order denying his motion for resentencing based on purported sentencing errors. We affirm.

PROCEDURAL BACKGROUND

In November 2005 Bugarin was charged in an information with two counts of attempted willful, deliberate and premeditated murder. (Pen. Code, §§ 187, 664.)¹ As to count 1, it was alleged he had personally and intentionally discharged a firearm, which proximately caused great bodily injury. (§ 12022.53, subd. (d).) As to both counts, the information alleged Bugarin had personally and intentionally discharged a firearm. (§ 12022.53, subd. (c).)

On December 12, 2006 Bugarin agreed to plead no contest to two amended counts of attempted murder and to admit the section 12022.53, subdivision (c), firearm-use enhancement alleged as to each count. The minute order of the plea hearing states, at the time he entered his plea, Bugarin was advised of his constitutional rights and the nature and consequences of the plea and his counsel joined in the waivers of Bugarin's constitutional rights.² The trial court expressly found the waivers, plea and admissions were voluntary, knowing and intelligent.

According to a March 16, 2007 minute order, at the sentencing hearing on that date the trial court sentenced Bugarin to the upper term of nine years for attempted murder on count 1, plus 20 years for the section 12022.53, subdivision (c), firearm-

¹ Statutory references are to this code.

² The minute order was attached as an exhibit to Bugarin's motion. There is no transcript of the plea hearing in the record on appeal.

use enhancement. The minute order further stated the court imposed a consecutive term of “one-third the mid-term of 27 years, which is 9 years” for attempted murder in count 2.³ The section 12022.53, subdivision (c), firearm-use enhancement on count 2, which Bugarin had admitted as part of the plea agreement, is not mentioned in the minute order.

In May 2018 the California Department of Corrections and Rehabilitation (CDCR) notified the trial court that the abstract of judgment showed a sentence of “one-third the mid-term of 9 years” had been imposed on count 2, whereas the minute order indicated a sentence of “one-third the mid-term of 27 years, which is 9 years” had been imposed on count 2. The CDCR noted the sentencing triad for attempted murder was five years, seven years or nine years and requested clarification from the trial court.

In response to the notice from the CDCR, the trial court prepared and sent to the CDCR on June 28, 2018 an amended abstract of judgment indicating Bugarin had been sentenced to an aggregate prison term of 38 years consisting of the nine-year upper term for attempted murder on count 1, plus 20 years for the section 12022.53, subdivision (c), firearm-use enhancement and a consecutive term of two years four months (one-third the seven-year middle term) for attempted murder on count 2, plus six years eight months (one-third the 20-year term) for the section 12022.53, subdivision (c), firearm-use enhancement.

On September 26, 2018 Bugarin filed a motion to correct illegal sentence in which he acknowledged the trial court had sentenced him in this case to an aggregate state prison term of

³ The record on appeal does not include a transcript of the sentencing hearing.

38 years. Nonetheless, Bugarin claimed the amended abstract of judgment erroneously included a section 12022.53, subdivision (c), firearm-use enhancement on count 2, which he contended he had never admitted (because it was not identified in the March 16, 2007 minute order). Bugarin also asserted under the plea agreement the sentences on counts 1 and 2 were to be served concurrently, not consecutively. Finally, Bugarin argued resentencing was necessary so he could request the trial court strike the firearm-use enhancements under recently amended section 12022.53, subdivision (h).

On October 4, 2018 the trial court denied Bugarin's motion, concluding, the "case is final and there is no basis for resentencing."⁴

Bugarin filed a timely notice of appeal. He did not seek a certificate of probable cause.

DISCUSSION

We appointed counsel to represent Bugarin on appeal. After an examination of the record, counsel filed an opening brief in which no issues were raised. On May 16, 2019 we advised Bugarin he had 30 days within which to submit any contentions or issues he wished us to consider. We have received no response.

Even without the benefit of a reporter's transcript of the sentencing hearing, it is clear the sentence on count 2 as shown in both the original abstract of judgment and the March 16, 2007 minute order was the result of clerical error, which the trial court was authorized to correct. (*People v. Ramirez* (2008))

⁴ The trial court granted Bugarin's separate motion to reduce the previously ordered restitution fine and stayed parole revocation fine from \$7,600 to \$200.

159 Cal.App.4th 1412, 1424.) Moreover, Bugarin was ineligible for resentencing under section 12022.53, subdivision (h) because his case became final well before that provision went into effect. (See *People v. Arredondo* (2018) 21 Cal.App.5th 493, 507.)

We have examined the record with respect to other potential sentencing or post-plea issues that do not challenge the validity of the plea and are satisfied Bugarin's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The postjudgment order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.