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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. WESLEY GARCIA, Defendant and Appellant.	B281474 (Los Angeles County Super. Ct. No. TA140251)

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Clay Jacke, II, Judge. Affirmed and remanded.

Steven Schorr, 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, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Shawn McGahey Webb, Supervising Deputy Attorneys General, William N. Frank, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Wesley Garcia (defendant) of two counts of willful, deliberate, and premeditated attempted murder and one count of carrying a loaded, unregistered handgun. The jury also found true allegations that defendant personally discharged a firearm causing great bodily injury in connection with each attempted murder charge. We consider whether substantial evidence supported the jury's finding that the attempted murders were willful, deliberate, and premeditated. We are also asked to decide whether a remand to the trial court is warranted (a) because defendant had no sufficient opportunity at sentencing to preserve a record for later use at a youth offender parole hearing, or (b) so that the trial court will have an opportunity to exercise discretion—recently conferred by the enactment of Senate Bill 620—to strike one or both firearm sentencing enhancements the jury found true.

I. BACKGROUND

A. The Charges

The Los Angeles County District Attorney charged defendant in an amended information with two counts of willful, deliberate, and premeditated attempted murder (Pen. Code,[1] §§ 187, subd. (a), 664) and one count of carrying an unregistered, loaded handgun (§ 25850, subd. (a).) The District Attorney further alleged defendant committed both attempted murders for the benefit of, at the direction of, or in association with a criminal street gang (§186.22) and personally and intentionally discharged a firearm causing great bodily injury (§ 12022.53, subd. (d)).

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[1] Statutory references that follow are to the Penal Code.

B. The Offense Conduct, as Established by the Evidence at Trial

At approximately 2:00 a.m. on May 25, 2016, Keynan Carter (Carter), along with his two friends Angus West (West) and Trevor Bradley (Bradley), pulled into a gas station at the intersection of El Segundo Boulevard and Main Street in Los Angeles. Carter, West, and Bradley were not gang members.

After Carter parked the car, he got out and walked toward the cashier. As he did so, Carter saw defendant standing near the right passenger door of a white Impala. Defendant was wearing a blue or black bandanna tied around his neck. As Carter walked past him, defendant asked Carter, "Where are you from," adding that he (defendant) was from "B-13" or "Barrio Trece" (a predominantly Hispanic criminal street gang). In response, Carter told defendant, "Don't be coming at me like that." Defendant laughed and said something in Spanish Carter did not understand. Carter walked away and gave the cashier money for gas.

Bradley overheard defendant ask Carter "Where are you from" and understood defendant's question to be aimed at everyone in Carter's car. Bradley and West got out of the car and walked toward defendant. Around the same time, a man named Miguel Chavez who was also known as Demon (Demon) got out of the Impala. Bradley knew Demon from the neighborhood and walked over to talk to him in hopes of defusing the situation. Bradley saw Melissa Ochoa, also known as Cookie (Cookie), in the backseat of the Impala.

While Bradley talked to Demon, West remained standing near defendant. West told defendant, "That's my brother. Don't mess with my brother." Defendant said nothing in reply.

After Carter paid for gas, he walked back to where Bradley and West were standing; defendant, who had not moved while Carter was paying the cashier, was also nearby. Defendant said something in Spanish that Carter did not understand and Cookie laughed. Carter replied by saying something along the lines of "Stop saying that," "Stop coming at me like that," or "Don't talk to me like that."

Defendant responded by pulling a black gun out of his waistband and shooting at Carter and West. Bradley, who was about six feet from defendant, identified the gun as a revolver.[2] When defendant fired the first shot, he was approximately five feet away from Carter and three feet away from West. Carter was not sure precisely how many shots were fired because he was running away. West did not see the gun, but estimated he heard six shots. West ran toward the street, and Bradley told him to lay down.

Carter and West were both wounded by the gunfire and were treated at hospitals. Carter was shot in his right shoulder and left elbow. West was shot in the arm and in the back, a few centimeters from his heart.

About a week after defendant shot Carter and West, Los Angeles County Sheriff's Department Sergeant Dru Strong and his partner Sergeant Iberri were performing a patrol check in an area frequented by the B-13 gang and observed defendant

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[2] Carter testified defendant used a black gun, but did not identify the type of gun. A Los Angeles Deputy Sheriff who later responded to Bradley's 911 call searched the scene, but did not find any casings or bullets, which, in her opinion, meant defendant probably used a revolver.

standing on the sidewalk with three other individuals. Sergeants Strong and Iberri detained defendant and the others because they saw smoke and smelled the odor of marijuana. Sergeant Strong observed a bulge in defendant's waistband, and when Sergeant Iberri conducted a pat down search of defendant, he recovered an unregistered, loaded revolver and additional bullets in defendant's pocket. The sergeants arrested defendant, and Carter and Bradley later recognized the revolver as similar to the gun defendant used to shoot them.

C. Additional Testimony and Evidence Presented by the Prosecution at Trial

Los Angeles County Deputy Sheriff Scott Giles, assigned as a gang detective at Century Station, testified as the prosecution's gang expert. He testified individual gang members gain status with their gang by "putting in work," which means committing crimes. He explained respect and fear are important to gang members because they confer status within the gang and increase the gang's status in its territory and among its rivals. Detective Giles similarly explained violence is looked upon favorably by gang members because it scares individuals in the area and discourages them from reporting the gang's crimes. According to the detective, it is "very common" for gang members to ask a person where they are from, and violence often ensues after the question/challenge is posed. He explained "where are you from" is a question aimed at finding out what gang the other person is from, and he explained a "wrong answer" will "usually" be followed by a shooting or beating.

Detective Giles also testified concerning B-13, specifically. He described the boundaries of B-13 territory, which included

both the gas station at which the shooting occurred and the street where defendant was arrested. Detective Giles testified B-13's primary activities are vandalism, narcotics sales, weapons possession, shootings, and murder. He also testified members of Hispanic gangs in Southern California, including B-13, will generally wear a blue bandanna "when they go out to commit crimes or do their mission." He said this was true even though B-13 members usually wear black.

Addressing the particulars of this case, Detective Giles opined defendant was a B-13 member based on his observation of gang tattoos on defendant's body and his review of photographs on defendant's Facebook account depicting defendant throwing gang signs and wearing gang paraphernalia. Detective Giles also opined Demon was a B-13 member based on admissions Demon made to Detective Giles, tattoos on Demon's body, and photographs on Facebook. Detective Giles further opined Cookie was an "associate" of B-13.

Toward the end of his testimony, the prosecution asked Detective Giles to offer an opinion on a detailed hypothetical scenario designed to track the facts of the shooting. Detective Giles opined the hypothetical crime was committed for the benefit of the B-13 criminal street gang with the specific intent to promote, further, or assist in criminal conduct by gang members. He testified the behavior described in the hypothetical would benefit the gang member who committed the crime because he would gain more respect, fear, and status within the gang due to his violent acts. He further testified the act would benefit the gang overall because B-13's rivals are mostly African-American gangs and shooting at African Americans within B-13's territory

(Carter, West, and Bradley were all African-American) would demonstrate B-13 is a violent gang willing to commit violent acts.

D. Convictions and Sentence

The jury found defendant guilty as charged on all three counts and found all sentence enhancement allegations true.

The trial court held a sentencing hearing on March 10, 2017. At the hearing, the trial court asked defendant's lawyer if he had anything he wished to say before the court imposed sentence. Defense counsel argued for concurrent sentences on the two attempted murder charges noting, among other things, that defendant was "[a] young man" who had "basically never been in trouble as an adult."

The trial court sentenced defendant to the low term of sixteen months for carrying an unregistered, loaded handgun. In selecting the low term, the trial court noted defendant's criminal record at the time of the offense was de minimis.

As to the willful, deliberate, premeditated attempted murder counts, the trial court sentenced defendant to two identical, consecutive sentences of life in prison with a minimum 15-year parole eligibility term. Added to that term were two consecutive terms of 25 years to life for the jury's true findings on the section 12022.53 firearm sentencing enhancements. In briefly explaining the reasons for its sentence, the trial court noted defendant was "a young man" who was nineteen at the time of the offense and, due to his age, would be brought before the parole board in his 25th year of incarceration pursuant to section 3051.

II. DISCUSSION

Defendant argues: (1) there was insufficient evidence for the jury to find the attempted murders were "willful, deliberate and premeditated"; (2) defendant is entitled to a limited remand under *People v. Franklin* (2016) 63 Cal. 4th 261 (*Franklin*), which would allow him to preserve a record for the eventual youth offender parole hearing he will receive; and (3) the case should be remanded to give the trial court the opportunity to consider whether to exercise its discretion to strike one or both of the section 12022.53 firearm sentencing enhancements. As to defendant's first claim, we hold the jury's willful, deliberate, and premeditated finding is supported by adequate evidence of planning activity, a motive to kill, and a manner of killing (multiple close-range gunshots) that suggests a pre-conceived design to kill. As to the *Franklin* claim, we conclude defendant was already afforded an opportunity to present such evidence and no further opportunity is required. We do conclude, however, that the case should be remanded to give the trial court an opportunity to exercise discretion—recently conferred by the enactment of Senate Bill 620—to strike one or both of defendant's section 12022.53 firearm sentencing enhancements. We also order certain errors in the abstract of judgment to be corrected on remand.

A. Substantial Evidence Supports the Jury's Premeditation Finding

"In assessing the sufficiency of the evidence supporting a jury's finding of premeditated and deliberate murder [or attempted murder], a reviewing court considers the entire record in the light most favorable to the judgment below to determine

whether it contains substantial evidence—that is, evidence which is reasonable, credible, and of solid value—from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] When the circumstances reasonably justify the jury's findings, a reviewing court's opinion that the circumstances might also be reasonably reconciled with contrary findings does not warrant reversal of the judgment. [Citations.]" (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1068-1069; *People v. Lenart* (2004) 32 Cal.4th 1107, 1125 (*Lenart*).)

Defendant contends there was insufficient evidence for the jury to find he committed willful, deliberate, and premeditated murder. To support a conviction for deliberate and premeditated first degree murder, there must be sufficient evidence the defendant carefully weighed considerations in choosing a course of action and thought about his conduct in advance. (*People v. Cage* (2015) 62 Cal.4th 256, 276 (*Cage*).) An intentional killing is premeditated and deliberate if it occurred as the result of preexisting thought and reflection, rather than as the product of an unconsidered or rash impulse. (*People v. Burney* (2009) 47 Cal.4th 203, 235; *People v. Jurado* (2006) 38 Cal.4th 72, 118.) ""'The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly . . . .'" [Citation.]" (*Cage*, *supra*, at p. 276.)

Courts evaluating whether an attempted murder was deliberate and premeditated ordinarily do so by considering the factors identified in *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 (*Anderson*), namely, planning activity, motive, and the manner of the killing. (*Cage*, *supra*, 62 Cal.4th at p. 276.) "[T]hese categories of evidence . . . 'are descriptive, not normative.'

[Citation.] They are simply an 'aid [for] reviewing courts in assessing whether the evidence is supportive of an inference that the killing was the result of preexisting reflection and weighing of considerations rather than mere unconsidered or rash impulse.' [Citation.]"[3] (*People v. Cole* (2004) 33 Cal.4th 1158, 1224.) Considering the record in light of the *Anderson* factors, we conclude there was sufficient evidence defendant acted with premeditation and deliberation.

First, defendant brought a loaded handgun with him on the night of the incident, indicating he was prepared for a violent encounter. (*People v. Lee* (2011) 51 Cal.4th 620, 636 [fact defendant brought a loaded handgun indicated he had considered the possibility of a violent encounter]; *People v. Steele* (2002) 27 Cal.4th 1230, 1250 [evidence defendant carried the knife into the victim's home made it "'reasonable to infer that he considered the possibility of homicide from the outset"'].) Additionally, defendant was standing at a gas station within his gang's territory at approximately 2:00 a.m. near another gang member and a gang affiliate, wearing a blue or black bandanna. Those facts, coupled with Detective Giles' testimony regarding the importance of protecting gang territory, the status gang members

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[3] "The *Anderson* factors are not the exclusive means for establishing premeditation and deliberation. (*People v. Perez* (1992) 2 Cal.4th 1117, 1125[(*Perez*)].) [Our Supreme Court] has, for example, concluded that an execution-style killing may be committed with such calculation that the manner of killing will support a jury finding of premeditation and deliberation, despite little or no evidence of planning and motive. (*People v. Hawkins* (1995) 10 Cal.4th 920, 957[ ].)" (*Lenart*, *supra*, 32 Cal.4th at p. 1127.)

are accorded when committing crimes, and the significance of wearing a blue bandanna—that a B-13 member is on a "mission" to commit a crime—support a reasonable inference defendant planned to use the lethal weapon he brought with him that night to kill.

Second, defendant's interaction with Carter and West allowed the jury to "reasonably infer a 'motive' to kill the victim . . . ." (*Anderson*, *supra*, 70 Cal.2d at p. 27.) The evidence demonstrated defendant, a B-13 member accompanied by other gang confederates, initiated the interaction with Carter by asking him where he was from. Detective Giles testified respect and fear are very important to gang members because they confer status within the gang, and individual gang members gain status within their gang by "putting in work" and committing crimes like shootings. The detective also testified the act would broadly benefit defendant's gang because B-13's rivals are mostly African-American gangs, and shooting at African Americans within B-13's territory demonstrates B-13 is a violent gang willing to commit violent acts, to discourage rival gangs from entering B-13's territory, and to increase fear of the gang within the community. Based on Officer Giles' testimony, commission of the crime would have bolstered B-13's gang image and built "respect" for defendant within the gang, either or both of which the jury could have reasonably concluded were pre-formed motives to kill.[4]

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[4] Defendant argues gang-related evidence could not serve as evidence of motive because there was no evidence Carter or West were from a rival gang, or that defendant had any reason to believe they were from a rival gang. While gang rivalry is certainly one form of gang-related motive, it is not the only acceptable form of a gang-related motive.

Finally, the manner of the attempted murder also supports the jury's premeditation and deliberation finding. There is no evidence Carter or West were armed, attacked defendant, or provoked him. Defendant began shooting at Carter and West while standing three to five feet away from them, continued to shoot at them as they ran away, and fired somewhere between four to six shots. This type of shooting suggests a preconceived design to kill. (*People v. Gonzales and Soliz* (2011) 52 Cal.4th 254, 295 [close-range shooting without any provocation or evidence of a struggle supported an inference of premeditation and deliberation]; *People v. Poindexter* (2006) 144 Cal.App.4th 572, 588 ["The manner of killing, while not an execution-style single shot to the head, could still support a finding of premeditation and deliberation, as defendant quickly fired three shots at the victim, with a shotgun, from a relatively close range"].) While it is true that defendant began shooting fairly abruptly, the jury could reasonably conclude he needed only a short time for deliberation when (a) he had already made the choice to bring a gun with him, and (b) he had time to reflect on what he planned to do when Carter was paying the cashier after defendant initiated the first "where are you from" confrontation. (*People v. Sanchez* (2001) 26 Cal.4th 834, 849 ["Premeditation can be established in the context of a gang shooting even though the time between the sighting of the victim and the actual shooting is very brief"]; *Perez*, *supra*, 2 Cal.4th at p. 1127 ["premeditation can occur in a brief period of time"].)

In his reply brief, defendant argues gang evidence cannot provide the basis for the premeditation findings because the gang expert's testimony was only admitted for the limited purpose of showing defendant committed the crimes for the benefit of the

gang. In support, defendant notes the jury was instructed with CALJIC No. 17.24.3, which, as given, informed the jury that the gang evidence "may not be considered by you to prove that defendant is a person of bad character or that he has a disposition to commit crimes. It may be considered by you [only] for the limited purpose of determining if it tends to show that the crime or crimes charged were committed for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members."

Defendant misreads the record and misconstrues the scope of the jury instruction. During trial, defense counsel asked the trial court to provide a limiting instruction regarding evidence of predicate acts the prosecution presented to establish B-13 was a criminal street gang. The trial court gave CALJIC No. 17.24.3 only in response to this request, not to generally limit other proper uses of the evidence in relation to the crimes charged. Defendant's attorney did not request a broader limiting instruction regarding the gang expert's testimony, nor would one have been appropriate.

Moreover, defendant's argument fails on its own terms. CALJIC No. 17.24.3 permitted the jury to consider whether the "crime or crimes charged" were committed for the benefit of, at the direction of, or in association with a criminal street gang. In essence, the question of whether defendant committed the shooting for the benefit of, or in association with, B-13 is a question of motive. In other words, if the jury considered the gang evidence to determine whether defendant shot Carter and West for the benefit of his gang, that is both the type of consideration CALJIC No. 17.24.3 authorizes and the type of

consideration relevant under the second of the *Anderson* factors. Such consideration of gang motive is permissible under established authority. (See, e.g., *People v. Hernandez* (2004) 33 Cal.4th 1040, 1049 ["Evidence of the defendant's gang affiliation—including evidence of the gang's territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like—can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime"]; *People v. Olguin* (1994) 31 Cal.App.4th 1355, 1370 [the "use of expert testimony in the area of gang sociology and psychology is well established"].)

B. No Remand Is Necessary for a Franklin *Hearing*

1. Defendant had an opportunity to create a record for his future youth offender parole hearing

A person under 25 years of age who commits an offense carrying a sentence of 25 years to life is eligible for release on parole and entitled to a youth offender parole hearing during his or her 25th year of incarceration. (§ 3051, subd. (b)(3); *Franklin, supra,* 63 Cal.4th at pp. 276-277.) In order for the Board of Parole Hearings to provide "a meaningful opportunity [for the defendant] to obtain release" (§ 3051, subd. (e)), the Board is to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§ 4801, subd. (c)). Additionally, persons "with knowledge about the individual before the crime or his or her growth and maturity

since the time of the crime may submit statements for review by the board." (§ 3051, subd. (f)(2).)

In *Franklin*, our Supreme Court recognized assembling information about a juvenile offender's "characteristics and circumstances at the time of the offense . . . is typically a task more easily done at or near the time of the juvenile's offense rather than decades later when memories have faded, records may have been lost or destroyed, or family or community members may have relocated or passed away." (*Franklin, supra*, 63 Cal.4th at pp. 283-284.) The Court also recognized that section 3051, subdivision (f)(1)'s instruction that any "'psychological evaluations and risk assessment instruments' used by the Board in assessing growth and maturity 'shall take into consideration . . . any subsequent growth and increased maturity of the individual' . . . . implies the availability of information about the offender when he was a juvenile." (*Id.* at p. 284.) Because it was "not clear whether Franklin had sufficient opportunity to put on the record the kinds of information that sections 3051 and 4801 deem relevant at a youth offender parole hearing," the court "remand[ed] the matter to the trial court for a determination of whether Franklin was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing." (*Ibid.*)

Defendant argues it is unclear from the record whether the court, prosecutor, or defense counsel "were aware of the hearing procedure provided for in *Franklin*" and, in any event, neither attorney requested and the trial court did not specifically offer a *Franklin* hearing. He argues this means he is entitled to a limited remand to preserve an accurate record for his future youth offender parole hearing.

Based on the record before us, we conclude defendant has already been afforded the requisite opportunity. *Franklin* was decided nearly a year before defendant's March 2017 sentencing hearing. Both counsel and the court are presumed to know applicable law. (*People v. Thomas* (2011) 52 Cal.4th 336, 361 ["In the absence of evidence to the contrary, we presume that the court "knows and applies the correct statutory and case law"]; *People v. Barrett* (2012) 54 Cal.4th 1081, 1105 [Counsel is "presumed competent and informed as to applicable constitutional and statutory law"].) At the sentencing hearing, defendant's lawyer noted on the record that defendant was young at the time of the offense and had "basically never been in trouble as an adult." The trial court also recognized defendant's age at least twice during the sentencing hearing, and asked defense counsel if there was anything he wished to say before the court imposed sentence.

We deem this sufficient opportunity. *Franklin* does not establish specific procedures or minimum requirements for the development of a record. Because defendant was given the opportunity *Franklin* demands, remand for a new *Franklin* hearing is not required.[5] (*People v. Cornejo* (2016) 3 Cal.App.5th 36, 68-70.)

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[5] As detailed *post*, we will remand the matter to allow the trial court to entertain a motion to strike defendant's firearm enhancements in furtherance of justice. Although we hold a *Franklin* hearing is not *required*, nothing we say precludes the trial court, if it so chooses, from permitting defendant to make a further record relevant to his future youth offender parole hearing during any further proceedings on remand.

2. Ineffective assistance of counsel

Defendant argues that if we decline to remand the matter for a *Franklin*-type hearing, his counsel rendered ineffective assistance by failing to further develop a record for his eventual youthful offender parole hearing.

In order to succeed on a claim of ineffective assistance of counsel, the defendant must show both that counsel's performance fell below an objective standard of reasonableness and that actual prejudice flowed from counsel's performance—i.e., a reasonable probability of a different result. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 691-692.) If the record does not adequately disclose the reasons for the challenged actions or omissions by appointed counsel, we will not hold counsel provided constitutionally deficient assistance on direct appeal unless there could be no conceivable reason for counsel's acts or omissions. (*People v. Weaver* (2001) 26 Cal.4th 876, 926; *People v. Earp* (1999) 20 Cal.4th 826, 896.)

Defendant's claim of ineffective assistance of counsel fails on direct appeal because the record does not adequately reveal the reasons for his attorney's alleged omissions. We do not know why defense counsel did not present further evidence concerning his client's youth and upbringing, but it is plausible defense counsel did not do so because no such information existed or because that would have invited damaging rebuttal evidence from the prosecution. In these circumstances, our Supreme Court's holding in a 2005 case controls: "'If the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, an appellate claim of ineffective assistance of counsel must be rejected unless counsel was asked for an explanation and failed to provide one, or there simply could be no satisfactory

explanation. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266[ ].) Otherwise, the claim is more appropriately raised in a petition for writ of habeas corpus. [Citation.]' [Citations.]" (*People v. Carter* (2005) 36 Cal.4th 1114, 1189.)

C. Senate Bill 620

Defendant filed a supplemental brief asking that we remand the matter to the trial court to provide the court with an opportunity to strike the firearm enhancements imposed at sentencing. (Sen. Bill No. 620 (2017-2018 Reg. Sess.) [effective January 1, 2018]; see also § 12022.53, subd. (h), as amended by Stats. 2017, ch. 682, § 2 ["The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section"].) The Attorney General submitted a supplemental respondent's brief conceding the new law applies retroactively to defendant. The Attorney General further agreed that we "may remand the matter" to the trial court for the limited purpose of allowing the trial court to consider whether to exercise the newly conferred discretion to strike defendant's firearm enhancements in furtherance of justice. We concur a remand is appropriate to allow the trial court the opportunity to exercise its discretion under section 1385 if it so chooses.

D. Presentence Custody Credits

The Attorney General contends, and defendant does not dispute, the trial court erred by awarding defendant presentence conduct credits on his conviction for carrying an unregistered loaded handgun based on section 4019 instead of section 2933.1. The failure to properly calculate presentence custody credit is a

jurisdictional issue which may be corrected at any time. (*People v. Chilelli* (2014) 225 Cal.App.4th 581, 591.)

Presentence credits for a violent felony as defined in section 667.5, subdivision (c), are governed by section 2933.1. Section 2933.1 restricts the award of presentence conduct credits to 15 percent of the actual period of confinement. (See § 2933.1, subds. (a), (c).) Defendant was convicted on two counts of attempted murder, which is listed as a "violent felony" in section 667.5. (§ 667.5, subd. (c)(12).) Defendant was therefore subject to the 15 percent limit under section 2933.1. Though the trial court properly recognized this when calculating his credits for the attempted murder convictions, the trial court awarded him credits at a higher rate for his nonviolent offense of carrying an unregistered loaded handgun.

Section 2933.1 "limits to 15 percent the maximum number of conduct credits available to 'any person who is convicted of a felony offense listed in Section 667.5.' That is, by its terms, section 2933.1 applies to the offender not to the offense and so limits a violent felon's conduct credits irrespective of whether or not all his or her offenses come within section 667.5." (*People v. Ramos* (1996) 50 Cal.App.4th 810, 817.) Because appellant was also convicted of violent offenses listed in section 667.5, he was subject to the 15 percent limit for all three of his offenses. On remand, the trial court should award 36 days of conduct credits on defendant's sentence for carrying an unregistered loaded handgun, which would result in a total of 282 days of presentence conduct credit.

E. Omissions in Defendant's Indeterminate Abstract of Judgment

The Attorney General also asserts, and defendant again does not dispute, that the first page of defendant's indeterminate abstract of judgment should be amended to reflect defendant was sentenced to life with the possibility of parole on both counts one and two, and both sentences were for "life in prison with a minimum parole eligibility of 15 years." Paragraph five of the abstract of judgment, which states defendant was sentenced to state prison for an indeterminate term of life with the possibility of parole only indicates the sentence was imposed as to count 1, and does not mention the minimum parole eligibility period of 15 years. Paragraph 12 on the second page of the abstract further specifies "[a]s to Counts 1 & 2, the defendant is ordered to serve an additional [l]ife sentence with a minimum of fifteen years . . . to be served consecutive." Though paragraph 12 resolves the ambiguity, we order the first page of the abstract amended to better reflect the trial court's pronouncement of judgment. (See, e.g. *People v. Mitchell* (2001) 26 Cal.4th 181, 187; *People v. Wynn* (2010) 184 Cal.App.4th 1210, 1221.)

DISPOSITION

Defendant's convictions are affirmed. The matter is remanded to the trial court for further proceedings consistent with this opinion.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.