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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR CASTELLANOS,

Defendant and Appellant.

B237653

(Los Angeles County  
Super. Ct. No. A793806)

APPEAL from a judgment of the Superior Court of Los Angeles County, Norm Shapiro, Judge. Affirmed.

Tara Hoveland, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Victor Castellanos appeals from the judgment entered following remand for resentencing. The trial court sentenced Castellanos to 39 years to life in prison. We affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

#### **1. *Facts.*<sup>1</sup>**

At approximately 11:00 p.m. on December 13, 1986, Angel Herrera, who lived on the first floor with his wife, was visiting his brothers and some friends in an upstairs apartment on Menlo. He left to go home, but returned several moments later “in an excited state,” stating that some “ ‘cholos’ ” wanted to rob him. Herrera’s brothers and two friends went back downstairs with him where they confronted four men.

Two of the men left immediately and one of the two men who remained, Castellanos, denied wanting to rob Herrera. He said he was simply asking Herrera how much his jewels were worth. Castellanos then referred to himself as “ ‘Mago,’ ” the magician, and stated that he was the head of the Eighteenth Street Gang.

At about this time, Castellanos’s remaining companion left, then returned with a gun. At Castellanos’s request, his companion handed him the gun. He placed it at Herrera’s right temple and fired. Herrera’s brothers and friends immediately ran, scattering through the apartment building as Castellanos fired shots at them. After he shot Angel Herrera’s brother, Raunel Herrera, in the back, Castellanos got into a small red car and drove off.

Herrera died of his head wound several hours later and Raunel Herrera remained in the hospital for four days. Some of the witnesses to the shootings indicated that Herrera might have had a folding knife, but no one had seen him brandish or display it. Raunel Herrera may have had a whip or rubber hose, but no one saw him attempt to use it.

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<sup>1</sup> The facts has been taken from the opinion filed in *People v. Castellanos* (Nov. 1, 1989, B035888 [nonpub. opn.]).

Castellanos offered an alibi. According to some defense witnesses, on the night of the shooting Castellanos had remained at his place of work to attend a party being given on behalf of a coworker. He left the party at approximately 10:00 p.m. to go home and shower, then returned to the party about a half hour later. Castellanos stayed at the party until after midnight, when he went to a liquor store to buy some beer. On his way, he was attacked and beaten about the head. However friends rescued him and brought him home at about 12:30 or 1:00 a.m.

Castellanos acknowledged that he was sometimes called “Mago” because he did magic tricks. However, he denied being affiliated with any gang. He also denied killing Angel Herrera or shooting at anyone else on the night of December 13, 1986.

*2. The November 1, 1989 opinion – the initial sentencing.*

On November 1, 1989, this court affirmed the judgment entered following a jury trial which resulted in Castellanos’s conviction of first degree murder (Pen. Code, § 187, subd. (a))<sup>2</sup> and two counts of attempted first degree murder (§§ 664/187, subd. (a)), during each of which he personally used a firearm (§ 12022.5, subd. (a)), and his admission with regard to count 1, the first degree murder, that he previously had been convicted of robbery, a serious felony (§ 1192.7, subd. (c)).

For the murder, the trial court had sentenced Castellanos to “25 years to life plus an additional seven years for the use enhancements. On the attempted murder counts, [the trial court had imposed a] consecutive sentence of nine years in prison plus applicable use enhancements.” (*People v. Castellanos, supra*, B035888, at p. 2.) Although this court affirmed the convictions, it remanded the matter so the trial court could correct what was determined to be a “defective” sentence. (*Id.* at p. 21.) The case was “remanded to the trial court for advisement of the consequences of [Castellanos’s] admission of [the] prior conviction for robbery and for a statement of reasons for [the imposition of] consecutive sentences.” (*Id.* at p. 22.)

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<sup>2</sup> All further statutory references are to the Penal Code unless otherwise indicated.

## *2. Resentencing on remand – November 15, 2011.*

Before proceedings could be held on remand, on April 17, 1990 Castellanos escaped from the Los Angeles County Jail where he was being held. He was arrested in Mexico on November 7, 2006 and extradited to Los Angeles County on July 19, 2011. He was resentenced on his California convictions in the Los Angeles County Superior Court on November 15, 2011.

The trial court noted that Castellanos had originally been sentenced to a term of 25 years to life for his conviction of first degree murder (§ 187, subd. (a)), plus two years for his personal use of a firearm during the offense (§12022.5, subd. (a)), “for a total term of 27 [years] to life on count 1.” In addition, the trial court had imposed a consecutive term of five years for Castellanos’s prior serious felony conviction for robbery (§ 1192.7, subd. (c)), making it “32 [years] to life at that time.” At the resentencing, the prosecutor indicated that he was “willing to allow the court to . . . impose the 25-year-to-life sentence” for Castellanos’s conviction of count 1, with a two-year firearm enhancement, for a total of 27 years to life.

With regard to the prior conviction, it appeared in the record that, although Castellanos had admitted it, he had not been made aware of the fact that his admission would enable the trial court to sentence him to an additional five years in prison. Defense counsel asserted, “So the consequence of the five years was one of the appellate issues, and we left that to the court’s discretion, and I think the respondents and the People just conceded on that issue.”

As to count 2, an attempted murder, defense counsel indicated that Castellanos had been sentenced to the upper term of nine years “and he was also sentenced to [a] [firearm use] enhancement of three years, for a total of 12 years consecutive.” For count 3, the second attempted murder, Castellanos had been sentenced to the “mid[-]term of seven years concurrent at the time.” In total, Castellanos had been sentenced to a term of 39 years to life in prison.

The trial court addressed Castellanos’s counsel, stating: “[F]irst of all, if we proceed in that fashion and your client is resentenced to a term of 27 years to life on

count 1, and count 2, a consecutive nine-year term, plus three for the finding on the [use of a firearm], for 12, for a total of 39 years, with a mid[-]term on count 3 to run concurrently, of course there would be—the district attorney would be and the court would be overlooking the five-year enhancement [for the prior felony conviction], and I’m going to assume . . . [t]he court would be willing to go ahead and impose that if it had the authority to do so. . . .”

The trial court then asked the prosecutor about his position on the matter. The prosecutor indicated that “in discussing this with [defense] counsel and the defendant [that] morning,” she had indicated that, although they did not yet have a prison package, if Castellanos “wanted to . . . be sentenced [that day] to the 39 years to life, then [she] would not pursue the five-year prior.”

The trial court stated that, under those circumstances, it “would proceed in that fashion.” The court continued: “Now I suppose the only thing that remains is [for] the court to state a reason or reasons for the consecutive term on count 2. [¶] . . . [¶] . . . Well, Mr. [Castellanos], I don’t want to hold anything back from you. When this case first came to the court, I was completely unaware of any of the background. It was the first notice that I had received personally. [¶] . . . [¶] — And I can’t quote exactly, . . . [but the original trial judge indicated] it was as cold and calculated a situation as one would find, and [the judge] had a lot of experience in the system, not only at that time, but up to that time and since. [¶] This court would have to agree, having experience within the system too. The court would simply say that an appropriate reason for imposing a consecutive term would be the fact that there were multiple victims involve[d] here, not only the decedent on count 1, but you have the — a victim in count 2 who not only was the victim but also suffered great bodily injury . . . . [¶] On that basis alone, the court feels the sentence would be appropriate. It would impose count 2, nine years plus three, consecutive to the term in count 1, for a total term of 39 years, and the court, in count 3, is willing to select the seven-year mid[-]term . . . and simply run that concurrently with the 39 years. That will be the sentence of the court.”

Then, in addition to the 39 years-to-life sentence, the trial court imposed a \$100 restitution fine.

With regard to presentence custody credits, Castellanos was awarded 1,304 days actually served and 266 days for good time/work time, for a total of 1,570 days.

On November 29, 2011, Castellanos filed a timely notice of appeal.

### **CONTENTIONS**

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed August 2, 2012, the clerk of this court advised Castellanos to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

### **REVIEW ON APPEAL**

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

### **DISPOSITION**

The judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.