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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.

ALBERT B. GUZMAN,

Defendant and Appellant.

B270756

(Los Angeles County
Super. Ct. No. GA076653)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Michael D. Carter, Judge. Affirmed.

Linda L. Gordon, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 2011, defendant and appellant Albert B. Guzman was convicted of first degree murder, committed when he was 16. He was sentenced to 50 years to life, consisting of 25 years to life for the murder plus 25 years to life for personal gun use. He appealed. We remanded for reconsideration of his sentence under *Miller v. Alabama* (2012) 576 U.S. __ [132 S.Ct. 2455] (*Miller*). (*People v. Guzman* (Oct. 23, 2014, B243895 [nonpub. opn.].) On remand, the trial court, after considering the *Miller* factors and Guzman's youth, sentenced Guzman to 35 years to life (25 years to life for the murder plus ten years for a gang enhancement). Guzman appeals again. We affirm the judgment.

BACKGROUND

The facts underlying Guzman's crime are set forth more fully in our prior opinion, of which we take judicial notice. (Evid. Code, § 451, subd. (a).) To summarize, on the evening of June 27, 2008, Guzman was with Ernesto Hernandez, Miguel Flores Pacheco and Fernando Valencia. The friends called themselves Pepper Street, which had the *raison d'être* of partying and fighting. That night, Guzman was armed with a gun. While driving around looking for people to fight, they encountered Anthony Taylor, who they beat up. Later, they saw Michael Delatorre, an associate of Summit Street, a rival gang. Guzman shot Delatorre, killing him.

On November 30, 2011, the jury found Guzman guilty of first degree murder (Pen. Code, § 187, subd. (a)).¹ The jury found true personal gun-use (§ 12022.53, subds. (b), (c), (d) & (e)(1)) and gang (§ 186.22, subd. (b)(1) & (4)) allegations. On September 7, 2012, the trial court sentenced Guzman to 25 years to life for the murder plus 25 years to life for the gun enhancement.

Guzman appealed. We remanded for the sole purpose of reconsideration of Guzman's sentence under *Miller* but otherwise affirmed the judgment. The People submitted supplemental briefing requesting that Guzman's sentence be modified to 25 years to life for the first degree murder plus a consecutive 10 years for the gang enhancement and that the provisions of section 12022.53, subdivisions (d) and (e)(1) be stayed. Guzman asked to be sentenced to 25 years to life for the murder and that the gun enhancement be stayed.

The trial court, on November 9, 2015, sentenced Guzman to 35 years to life (25 years to life for the murder plus 10 years for the gang enhancement). It stayed the gun enhancement. In reaching this sentence, the court took into account "the defendant's age at the time, his maturity level based on what I saw in the probation report and what I saw from the trial, the influences that the co-defendants who were adults may have had on the defendant as pointed out in defense counsel's motion and the overall facts involved in this case."

¹ All further undesignated statutory references are to the Penal Code.

DISCUSSION

After review of the record, Guzman's court-appointed counsel filed an opening brief which raised no issues and asked this court to conduct an independent review of the record, under *People v. Wende* (1979) 25 Cal.3d 436, 441. By letter dated August 22, 2016, we advised Guzman that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. We received no brief or letter.

Before resentencing Guzman on remand, the trial court considered the *Miller* factors as they applied specifically to Guzman. The court adopted the People's recommendation and crafted a sentence to comply with *Miller* and the Eighth Amendment of the United States Constitution. (See generally *People v. Dillon* (1983) 34 Cal.3d 441, 477-489, superseded by statute on another ground as stated in *People v. Chun* (2009) 45 Cal.4th 1172, 1186; *People v. Mendez* (2010) 188 Cal.App.4th 47.)

We have examined the record and are satisfied Guzman's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 126; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.