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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN LEVON WATSON,

Defendant and Appellant.

B279464

(Los Angeles County
Super. Ct. No. VA140556)

APPEAL from an order of the Superior Court of Los Angeles County, Roger Ito, Judge. Affirmed.

Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

On October 18, 2016, a jury convicted appellant Sean Levon Watson of two counts of second degree robbery (Pen. Code, § 211; counts 1 and 2)¹ and one count of child abuse (§ 273a, subd. (a); count 3). As to the robbery counts, the jury found true the allegations that appellant personally discharged and used a firearm, and that he was armed with a firearm in committing the offense (§§ 12022.53, subds. (b), (c); 12022, subd. (a)(1)). As to the child abuse count, the jury found true the allegation that appellant personally used a firearm. (§ 12022.5, subd. (a).) On December 5, 2016, appellant admitted having suffered two prior “strike” convictions. (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i).) The court struck one of the strikes as to count 2 only. It sentenced appellant to 25 years to life on count 1 under the Three Strikes law as a third strike, plus a consecutive sentence of 20 years on the firearm use allegation and 5 years on the prior serious felony conviction; the midterm of three years on count 2, doubled as a second strike under the Three Strikes law (six years), plus a consecutive term of six years, eight months for the firearm allegation; and one-third the midterm of four years on count 3, doubled under the Three Strikes law (32 months), plus a consecutive term of 16 months for the firearm allegation. During sentencing, the court stated that count 1 would be treated as the principal term and that count 2 would be “subordinate to Count 1.”

Appellant timely appealed. Appointed appellate counsel initially filed a brief arguing that appellant’s sentence on count 2 was unauthorized under section 1170.1 of the Determinate Sentencing Act (DSA). That section generally provides that the

¹ All further statutory citations are to the Penal Code, unless otherwise stated.

aggregate term of imprisonment for multiple felony convictions “shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.” (§ 1170.1, subd. (a).) Counsel argued that the trial court improperly calculated the sentence on count 2 as though it were the principal term. Because the sentence on count 2 was the subordinate term, counsel asserted it should have been one-third of the term imposed.

Subsequently, counsel withdrew the brief challenging sentencing on count 2. Counsel then filed a brief raising no issues, but asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. (See *Smith v. Robbins* (2000) 528 U.S. 259, 264.) On July 31, 2017, we advised appellant he had 30 days within which to submit by brief or letter any contentions or argument he wished this court to consider. No response was received.

Appellant’s sentence was not unauthorized under the DSA. Appellant was sentenced to an indeterminate term on count 1 and determinate terms on counts 2 and 3. An indeterminate term cannot serve as the principal term for purposes of section 1170.1, subdivision (a). (See *People v. Day* (1981) 117 Cal.App.3d 932, 936-937; see also *People v. Reyes* (1989) 212 Cal.App.3d 853,

856 [when a defendant is sentenced to both a determinate and an indeterminate sentence, neither term is principal or subordinate].) Thus, the sentence on count 2 was properly calculated as the principal term under section 1170.1, subdivision (a). This court has examined the entire record in accordance with *People v. Wende, supra*, 25 Cal.3d at pages 441-442, and is satisfied appellant's attorney has fully complied with the responsibilities of counsel, and no arguable issues exist. Accordingly, we affirm.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.