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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH FRANKLIN,

Defendant and Appellant.

B296581

(Los Angeles County  
Super. Ct. No. TA088319)

APPEAL from an order of the Superior Court of  
Los Angeles County, Michael Shultz, Judge. Affirmed.

Ann Krausz, under appointment by the Court of Appeal, for  
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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In 2008, defendant and appellant Kenneth Franklin was convicted by jury of nine counts of second degree robbery in violation of Penal Code section 211.<sup>1</sup> The jury also found true as to all counts that Franklin personally used a firearm within the meaning of section 12022.53, subdivision (b), and that he committed the robberies at the benefit of, direction of, or in association with a criminal street gang with the intent to promote, further, or assist in criminal conduct by gang members within the meaning of section 186.22, subdivision (b)(1)(C).

The court sentenced Franklin to an aggregate term of 59 years and eight months in state prison, comprised of a total of 13 years for the robberies, 10 years for the gang enhancement on count 1,<sup>2</sup> 10 years for the firearm enhancement on count 1, and a total of 26 years eight months for the gun enhancements on the remaining eight counts.

Franklin's convictions and sentence were affirmed. His petition for review in the California Supreme Court was denied on July 14, 2010, and the remittitur issued on July 22, 2010.

On January 16, 2019, Franklin, in pro. per., filed a petition for resentencing pursuant to Senate Bill No. 620, asking the trial court to exercise its discretion to strike or dismiss the section 12022.53, subdivision (b) firearm enhancements. On January 22, 2019, the trial court denied Franklin's petition on the ground that Senate Bill No. 620 is retroactive only to cases not yet final on appeal on January 1, 2018, the effective date of the statute.

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<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> The court imposed and stayed the 10-year gang enhancements on the remaining eight counts.

We appointed counsel to represent Franklin on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court to review the record independently. On August 5, 2019, we advised Franklin he had 30 days within which to personally submit any contentions or issues he wished us to consider and, on September 12, 2019, Franklin filed a supplemental brief.

In his brief, Franklin argues the trial court erred by denying his petition for resentencing because Senate Bill No. 620 is retroactive to all cases. To support his argument, he cites to an unpublished portion of *People v. Hurlic*, issued by Division Two of the Second District on July 9, 2018, of which the first sentence under Section II reads: “Although Senate Bill No. 620 retroactively applies to *all* defendants whose convictions are final, not all defendants are entitled to remand for resentencing.” (*People v. Hurlic* (Jul. 9, 2018, B286082) [nonpub. opn.], at [p. 11].)

In our view, this portion of the unpublished opinion contains an inadvertent error because, in the published portion of the opinion, the court stated unequivocally that “courts have unanimously concluded that Senate Bill No. 620’s . . . grant of discretion to strike firearm enhancements under section 12022.53 applies retroactively to all *nonfinal* convictions.” (*People v. Hurlic* (2018) 25 Cal.App.5th 50, 56, italics added.) Indeed, our Courts of Appeal have consistently held that Senate Bill 620 is retroactive only to those cases not yet final on appeal on the effective date of the statute, January 1, 2018. (*People v. K.P.* (2018) 30 Cal.App.5th 331, 339; *People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1079-1080; *People v. Arredondo* (2018) 21 Cal.App.5th 493, 507; *People v. Watts* (2018) 22 Cal.App.5th

102, 119; *People v. Robbins* (2018) 19 Cal.App.5th 660, 678-679; *People v. Woods* (2018) 19 Cal.App.5th 1080, 1090.) Furthermore, we are aware of no published opinion or other authority indicating Senate Bill No. 620 applies to final judgments, nor does Franklin provide any.

We have examined the entire record and are satisfied that Franklin's counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

#### **DISPOSITION**

The order is affirmed.

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STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.