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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

COOPER LEE PARTNER,

Defendant and Appellant.

B287767

(Los Angeles County
Super. Ct. No. TA072936)

APPEAL from judgments of the Superior Court of Los Angeles County. Raul A. Sahagun, Judge. Affirmed as modified.

David Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Cooper Lee Partner appeals an order after judgment denying his request for resentencing under Senate Bill No. 620, which amends Penal Code section 12022.53, subdivision (h),¹ to permit the court to strike or dismiss a firearm use enhancement required by that section in the interest of justice pursuant to section 1385.

On May 25, 2005, Partner pleaded no contest to attempted murder (§§ 187/664 [count 1]), and admitted the allegation that he personally used a firearm within the meaning of section 12022.53, subdivision (b), and personally inflicted great bodily injury on the victim within the meaning of section 12022.7, subdivision (b). Count 2, assault with a deadly weapon (§ 245, subdivision (a)(1)), was dismissed per plea negotiation.

With respect to count 1, the trial court imposed the upper term of 9 years, plus an additional 10 years pursuant to section 12022.53, subdivision (b), plus 5 years under section 12022.7, subdivision (b), for a total sentence of 24 years in prison.

Partner filed a notice of appeal, and checked the box stating: “This appeal is based on the sentence or other matters occurring after the plea that do not reflect the validity of the plea.”

We appointed counsel to represent Partner on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. Counsel advised

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Partner he had 30 days within which to personally submit any contentions or issues that he wished us to consider. On June 1, 2018, we advised Partner that the court was in receipt of his pro per letter dated May 24, 2018, which we ordered filed as a supplemental brief, and that he had 30 days within which to file a supplemental brief or letter regarding any additional grounds for appeal that he wished the court to consider. Partner filed additional letter briefs asserting grounds for appeal on June 11, 2018, and June 26, 2018.²

In his letter briefs, Partner contends that: (1) imposition of the 10-year firearm enhancement under section 12022.53, subdivision (b) is unconstitutional because the enhancement is attached to count 2, which was dismissed; (2) the investigating detective, who was terminated from his position while investigating Partner, “sabotaged” the case by badgering witnesses and the victim; (3) the victim lied in court; (4) evidence that may have exonerated him was misplaced; (5) the 10-year enhancement under section 12022.53, subdivision (b) was unrelated to his prior offense of possession of marijuana for sale; (6) the “appellate sentence enhancements” are unconstitutional; and (7) imposition of the high term in count 1 violated his right to equal protection under the law.

² We received a letter from Partner on July 6, 2018, which we do not consider as part of the supplemental brief, as it was received more than 30 days after our order.

In our review of the entire record, we discovered the abstract of judgment and minute order dated May 25, 2005, incorrectly reflect that a 10-year enhancement was imposed under Penal Code section 12022.53, subdivision (d).

Defendant admitted to firearm use under Penal Code section 12022.53, subdivision (b) (not subdivision (d)), and the trial court orally imposed the 10-year sentence pursuant to that subdivision. We invited the parties to file letter briefs on the apparent error in the abstract of judgment and minute order.

On August 8, 2018, defendant filed a supplemental brief agreeing that there was an error in the abstract of judgment and further alleging that there was an error in sentencing because the prosecution agreed to “dismiss any and all remaining counts and special allegations as per the plea bargain agreement” and offering the transcript of the sentencing hearing in case No. TAO72936 as evidence in support of his claim. We issued an order granting defendant permission to file the August 8, 2018 supplemental letter brief and to augment the record.

We are precluded from reviewing these issues—none of which relate to the trial court’s order denying Partner’s request for resentencing—absent a certificate of probable cause. Because he did not obtain a certificate of probable cause, Partner cannot raise issues underlying his guilty or no contest plea on appeal. (See *People v. Panizzon* (1996) 13 Cal.4th 68, 76–79 (*Panizzon*).) Instead, his appeal is limited to “postplea claims, including sentencing issues, that do not

challenge the validity of the plea.” (*People v. Cuevas* (2008) 44 Cal.4th 374, 379.) A certificate of probable cause is also required to challenge a stipulated sentence that was “an integral part of the plea bargain.” (*People v. Enlow* (1998) 64 Cal.App.4th 850, 853–854, citing *Panizzon, supra*, at p. 78.)

Here, in exchange for Partner’s plea, the People agreed to amend the attempted murder charges to omit a premeditation clause and allege gun use without discharge. The assault with a deadly weapon charge was dismissed. The parties also agreed to a specified sentence and the underlying calculations that the sentence was based upon. Thus, as in *Panizzon* and *Enlow*, the stipulated term was an integral part of the plea.

Partner’s sentence was not rendered unlawful by the recent amendments to section 12022.53. A certificate of probable cause is therefore necessary to challenge the sentence on appeal. (*Panizzon, supra*, 13 Cal.4th at p. 78.) After full consideration of Partner’s supplemental brief, we conclude it raises no arguable issues on appeal.

The abstract of judgment and minute order must be modified to correctly reflect the plea and oral pronouncement. Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185–186.)

We are otherwise satisfied that Partner’s attorney has fully complied with his responsibilities and that no other

arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 278–284; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is modified to reflect that the 10-year firearm enhancement was imposed under section 12022.53, subdivision (b), rather than section 12022.53, subdivision (d). As so modified, the judgment is affirmed. The clerk of the superior court is directed to correct the May 25, 2005 minute order and abstract of judgment to reflect that the 10-year enhancement was imposed under section 12022.53, subdivision (b), prepare an amended abstract of judgment, and forward a certified copy to the Department of Corrections and Rehabilitation.

MOOR, J.

We concur:

BAKER, Acting P.J.

JASKOL, J.*

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