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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

NOE HERNANDEZ,

Defendant and Appellant.

B291856

(Los Angeles County  
Super. Ct. No. BA395711)

THE COURT:

The underlying case involves a shooting with four victims. Noe Hernandez (appellant) was convicted on one count of murder and three counts of attempted murder. On each count, he was sentenced to 15 years to life and received a firearm enhancement of 25 years to life pursuant to Penal Code section 12022.53, subdivision (d).<sup>1</sup> Alternative 10-year and 20-year enhancements under section 12022.53, subdivisions (b) and (c) were stayed. We

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

affirmed appellant's convictions in *People v. Hernandez* (June 13, 2017, B262261) [nonpub. opn.] (*Hernandez I*) but remanded for resentencing for the trial court to specify whether the sentences were concurrent or consecutive. After a new sentencing hearing, the trial court specified that the sentences were consecutive. (*Hernandez I, supra*, B262261; *People v. Hernandez* (May 29, 2018, B285819) [nonpub. opn.] (*Hernandez II*).)

Subsequently, Senate Bill No. 620 (SB 620) took effect. It amended section 12022.53, subdivision (h) and gave trial courts the discretion to strike firearm enhancements pursuant to section 1385. In *Hernandez, supra*, B285819, Hernandez sought a new sentencing hearing under SB 620. We conditionally reversed the firearm enhancements and remanded the matter to the trial court to exercise its discretion under SB 620. (*Hernandez II, supra*, at p. 2.) After a hearing, the trial court declined to strike any of the section 12022.53 enhancements.

Appellant now appeals the trial court's SB 620 decision after the remand in *Hernandez II*. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) requesting that we independently review the record on appeal for arguable issues. On October 11, 2018, we sent a letter notifying appellant of his counsel's brief and gave him leave to file his own brief or letter within 30 days to state any grounds or argument he might wish to have considered. After we granted him a 30-day extension, appellant filed a supplemental brief. Upon review of the record and appellant's supplemental brief, we conclude there is no basis for reversal.

The question is whether the trial court abused its discretion. We must affirm a trial court's sentencing choice unless it is "so irrational or arbitrary that no reasonable person

could agree with it.” (*People v. Carmony* (2004) 33 Cal.4th 367, 377.) Appellant does not argue that the trial court’s decision was irrational or arbitrary. Instead, he requests that we strike or dismiss the firearm enhancements on the grounds that the record from his trial tends to show his innocence. In the alternative, he asks that we provide counsel for both sides the opportunity to brief and argue the issue.

Appellant’s arguments operate as a collateral attack on our decision in *Hernandez I* because they suggest that the evidence was constitutionally insufficient to support his convictions. This type of collateral attack is not permissible. (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1156 [“A collateral attack will lie only for a claim that the judgment is void on its face for lack of personal or subject matter jurisdiction or for the granting of relief which the court has no power to grant”].) It therefore does not support appellate relief.

We are satisfied that appellant’s counsel complied with her responsibilities. In addition, we conclude that appellant received adequate and effective appellate review by virtue of counsel’s compliance with the *Wende* procedure and our review of the record. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123–124.)

The judgment is affirmed.

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LUI, P.J.

ASHMANN-GERST, J.

HOFFSTADT, J.