

Filed 10/30/18 P. v. Bailey CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GERRY MCLEAN BAILEY,

Defendant and Appellant.

B289558

(Los Angeles County  
Super. Ct. No. BA237267)

APPEAL from an order of the Superior Court of  
Los Angeles County, George Gonzalez Lomeli, Judge. Affirmed.

John F. Schuck, under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Gerry McLean Bailey was sentenced in 2003 to an aggregate state prison term of 44 years four months following his conviction on numerous counts of robbery and false imprisonment. In January 2018 Bailey moved to stay or strike the firearm enhancements included in his sentence under Penal Code section 12022.53, subdivision (b),<sup>1</sup> pursuant to the recent amendment to section 12022.53, subdivision (h), which authorizes the trial court, in the interest of justice, to strike or dismiss an enhancement otherwise required to be imposed by section 12022.53. The trial court denied the motion. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Based on his participation in a crime spree spanning several weeks in late 2001, a jury convicted Bailey on eight counts of second degree robbery (§ 211) and six counts of false imprisonment (§ 236). The jury found true the special allegations that Bailey had personally used a firearm during the commission of each robbery (§ 12022.53, subd. (b)) and that a principal had been armed during the commission of the false imprisonment offenses (§ 12022, subd. (a)(1)). (See *People v. Bailey* (Dec. 16, 2004, B172132) [nonpub. opn.].)

On December 19, 2003 the trial court sentenced Bailey to an aggregate state prison term of 44 years four months, which included 33 years four months for firearm enhancements imposed pursuant to section 12022.53, subdivision (b).

At the time Bailey was sentenced, imposition of firearm-use enhancements on the eight robbery counts pursuant to section 12022.53, subdivision (b), was mandatory. Effective January 1, 2018, section 12022.53, subdivision (h), was amended to authorize the trial court, in the interest of justice, to strike or

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<sup>1</sup> Statutory references are to this code.

dismiss an enhancement otherwise required to be imposed by section 12022.53.

On January 8, 2018 Bailey moved to stay or strike the section 12022.53, subdivision (b), firearm enhancements included in his sentence. On March 14, 2018, following a review of Bailey's motion and consideration of the overall record of the case, the trial court declined to exercise its discretion to strike the firearm enhancements under section 12022.53, subdivision (h). Bailey filed a timely notice of appeal.

### **DISCUSSION**

We appointed counsel to represent Bailey on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On July 11, 2018 we advised Bailey he had 30 days within which to submit any contentions or issues he wished us to consider. We have received no response.

We have examined the record and are satisfied Bailey's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

### **DISPOSITION**

The order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.