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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.

DANIEL MOLAYEM,

Defendant and Appellant.

B286784

(Los Angeles County
Super. Ct. No. BA445216)

THE COURT:

A jury convicted Daniel Molayem (defendant) of first degree murder (Pen. Code, § 187, subd. (a)) and found true the allegation that he personally and intentionally discharged a firearm causing death (Pen. Code, § 12022.53, subd. (d)). The trial court sentenced defendant to prison for 50 years to life, comprised of 25 years to life for the murder and 25 years for the gun enhancement.

Defendant filed a timely appeal, and we appointed counsel to represent him on appeal. Defendant's appointed counsel filed

a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On May 22, 2018, we gave notice to defendant that his counsel had failed to find any arguable issues and that defendant had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Defendant filed a letter brief on June 14, 2018.

We have independently examined the entire record and have found that no arguable issues of any sort exist.

The first degree murder conviction and weapon enhancement are supported by substantial evidence. After his arrest, defendant admitted that he repeatedly stabbed Terry Benjamin (Benjamin) in Benjamin's apartment to "protect" himself from Benjamin's sexual advances. Defendant also admitted that he and Benjamin had known each other for a while and that Benjamin occasionally paid defendant for sexual activity. The forensic evidence confirmed defendant's account: Benjamin suffered several stab wounds; both defendant's and Benjamin's DNA was found on one or more of four knives stuffed into a bag in Benjamin's apartment; and defendant's fingerprints were found on items in Benjamin's apartment, including on a mop used to clean up some of the blood from the stabbings. What is more, when law enforcement tracked down video footage from a Wal-Mart corresponding with the time listed on a Wal-Mart receipt in Benjamin's apartment, the video depicted Benjamin and defendant together; defendant appeared to be wearing the same shirt and camouflage pants contained in a bag found in Benjamin's apartment.

We have also not identified any defects with the trial. The jury was properly instructed on the crimes of first and second degree murder, voluntary and involuntary manslaughter, the

allegation of personal use of a deadly weapon, and also on complete and imperfect self-defense. And the trial court's evidentiary rulings were within its discretion.

Additionally, when sentencing defendant, the trial court in anticipation of the amendment to section 12022.53 allowing the trial court discretion to strike the previously mandatory 25-year sentence enhancement, did exercise that discretion and ultimately decided not to strike or dismiss the enhancement because of the circumstances of the offense and defendant's prior criminal record.

Because we have determined that there are no arguable issues, we are satisfied that defendant's attorney has fully complied with his responsibilities and affirm defendant's conviction and sentence. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *Wende, supra*, 25 Cal.3d at p. 441.)

The judgment is affirmed.

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ASHMANN-GERST, Acting P.J. CHAVEZ, J. HOFFSTADT, J.