

Filed 10/15/19 P. v. Bojorquez CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ADOLFO RAMON BOJORQUEZ,

Defendant and Appellant.

B296681

(Los Angeles County
Super. Ct. No. BA240074)

APPEAL from an order of the Superior Court of Los Angeles County, Judith L. Meyer, Judge. Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On August 10, 2018, the California Department of Corrections and Rehabilitation (CDCR) wrote to the trial court, providing it with the authority to resentence defendant Adolfo Ramon Bojorquez pursuant to Penal Code section 1170, subdivision (d).¹ The CDCR explained that when Bojorquez was convicted in 2003 of assault with a deadly weapon (§ 245, subd. (a)(3)), the trial court imposed both weapons use (§ 12022.5) and gang (§ 186.22, subd. (b)(1)(B)) enhancements. However, in *People v. Le* (2015) 61 Cal.4th 416, 429, the Supreme Court held “that a trial court is precluded from imposing both a firearm enhancement under section 12022.5, subdivision (a)(1) and a serious felony gang enhancement under section 186.22, subdivision (b)(1)(B) when the crime qualifies as a serious felony solely because it involved firearm use.”

The trial court declined to resentence Bojorquez but ordered the abstract of judgment corrected to reflect that Bojorquez’s sentence was enhanced pursuant to subdivision (b)(1)(A) of section 186.22, not subdivision (b)(1)(B). Subdivision (b)(1)(A) applies to nonserious, nonviolent felonies.

Bojorquez appealed, and we affirmed. We agreed with the trial court that because Bojorquez was not convicted of a serious felony, and his conviction was not enhanced under section 186.22, subdivision (b)(1)(B), *Le* did not apply to him. (*People v. Bojorquez* (Jul. 31, 2019, B294711) [nonpub. opn.].)

While that appeal was pending, on March 21, 2019, the trial court again denied a request that it exercise its discretion to resentence Bojorquez. The request was based on the same August 10, 2018 letter from the CDCR at issue in the prior

¹ All further statutory references are to the Penal Code.

appeal. The denial was, in part, on the same basis as the previous denial.² Bojorquez again appealed.

We appointed counsel to represent Bojorquez on this appeal. After review of the record, Bojorquez's counsel filed an opening brief requesting this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On July 22, 2019, we sent a letter to Bojorquez, advising him that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. We received no response.

We have examined the entire record. We are satisfied that no arguable legal issues exist and that Bojorquez's counsel has fully complied with his responsibilities. By virtue of counsel's compliance with the *Wende* procedure and our review of the record, we are satisfied that Bojorquez received adequate and effective appellate review of the order entered against him in this case. (*People v. Wende, supra*, 25 Cal.3d at p. 441; accord, *People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

² The trial court also based its denial on the fact the sentence was pursuant to a plea agreement.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

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