

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

NICK VERDUGO,

Defendant and Appellant.

B282718

(Los Angeles County  
Super. Ct. No. BA245638)

APPEAL from an order of the Superior Court of  
Los Angeles County, William R. Pounders, Richard S. Coen,  
Judges. Affirmed.

Rachel Varnell, under appointment by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

---

Nick Verdugo was convicted in 2006 following a jury trial of first degree murder (Pen. Code, §§ 187, subd. (a), 189),<sup>1</sup> conspiracy to commit murder and aggravated assault (§ 182, subd. (a)(1)), assault with a firearm (§ 245, subd. (a)(2)) and carrying objects into jail to facilitate an escape from custody (§ 4535). The jury also found true several special firearm-use and criminal street gang enhancement allegations. Verdugo was sentenced to an aggregate state prison term of 57 years eight months to life. We affirmed the convictions on appeal but modified Verdugo's sentence to correct several unauthorized provisions. (*People v. Barraza et al.* (June 17, 2008, B194415) [nonpub. opn].)

On March 16, 2017 Verdugo moved to modify his sentence, challenging the \$10,855.50 victim restitution fine imposed under section 1202.4, subdivision (b). The trial court denied Verdugo's request to modify the fine to \$200 based on insufficient evidence of his inability to pay, but ordered the fine decreased to \$10,000, the statutory maximum. (§ 1202.4, subd. (b)(1).)

Verdugo filed a timely notice of appeal from the order.

### **DISCUSSION**

We appointed counsel to represent Verdugo on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On January 19, 2018 we advised Verdugo he had 30 days within which to submit any contentions or issues he wished us to consider.

On February 20, 2018 we received a typed four-page supplemental brief in which Verdugo challenged the September 28, 2006 judgment, asserting: (1) His conviction of

---

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

first degree murder was unconstitutional because he was charged with violating section 187, rather than sections 189 and 190.

(2) He was denied a fair trial because his probation report was lost or destroyed. (3) The firearm-use enhancement imposed pursuant to section 12022.53, subdivision (d), did not apply to the facts of this case because the shots were fired from a parked car, not a moving car. (4) His trial counsel provided constitutionally ineffective assistance by failing to request a jury instruction regarding corroboration of accomplice testimony.

Verdugo's opportunity to contest on appeal the issues he raises in his supplemental brief has long since passed. Furthermore, any issues pertaining to the judgment in this case other than the propriety of the March 16, 2017 order modifying the restitution fine are beyond the scope of this appeal. With respect to that order, the trial court properly corrected an unauthorized sentence by decreasing the amount of the restitution fine to the statutory maximum. As for the sentencing court's purported failure to consider evidence of Verdugo's inability to pay a restitution fine in excess of \$200, Verdugo forfeited this claim by failing to object at the sentencing hearing. (See *People v. Nelson* (2011) 51 Cal.4th 198, 227 [at the time of Verdugo's crime and sentencing, "the law called for the court to consider a defendant's ability to pay in setting a restitution fine, and defendant could have objected at the time if he believed inadequate consideration was being given to this factor"].) Moreover, on the merits nothing in the record supports Verdugo's claim of inability to pay beyond his then-impending incarceration. (*Ibid.*)

We have examined the record and are satisfied Verdugo'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:

SEGAL, J.

FEUER, J.\*

---

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