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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNIE LOPEZ,

Defendant and Appellant.

B282845

(Los Angeles County
Super. Ct. No. LA082529)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Richard H. Kirschner, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Ernie Lopez appeals from the judgment entered after the trial court corrected an unauthorized sentence, which did not increase defendant Ernie Lopez's state prison term. We affirm.

PROCEDURAL BACKGROUND

A jury convicted Lopez on two counts of making a criminal threat (Pen. Code, § 422, subd. (a), counts 1 and 2) and one count of feloniously evading a pursuing peace officer (Veh. Code, § 2800.2, subd. (a), count 3). In bifurcated proceedings, the trial court found Lopez had suffered two prior convictions for serious or violent felonies within the meaning of the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and a serious felony conviction under Penal Code section 667, subdivision (a)(1).

Prior to sentencing, the trial court granted the defense motion to dismiss one of Lopez's prior strike convictions under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and Penal Code section 1385. On July 27, 2016, the court sentenced Lopez to an aggregate state prison term of nine years, consisting of the midterm of two years on count 1 (criminal threat), doubled because of the strike, plus five years for the serious felony enhancement under Penal Code section 667, subdivision (a)(1). The trial court imposed the same sentence to run concurrently as to count 2 (criminal threat) and count 3 (felony evading).

On April 5, 2017, the People filed an application for Lopez to be resentenced. They asserted the trial court had imposed an unauthorized sentence under Penal Code section 1170.1 by ordering that the subordinate term on count 2, making a criminal threat, be served concurrently rather than consecutively to count 1, the base term.

On May 17, 2017, the trial court granted the application and resentenced Lopez to an aggregate state prison term of nine

years, consisting of 32 months (the 16-month lower term doubled under the Three Strikes law) on count 1, plus 16 months (one-third the two-year midterm doubled) on count 2, plus a concurrent term of two years (the midterm) on count 3, and five years for the prior serious felony enhancement. The trial court observed that as to count 3, it had the discretion to run the sentence concurrently with counts 1 and 2.

Lopez filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Lopez on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On December 1, 2017, we advised Lopez he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted us to consider. We have not received a response.

We have examined the record and are satisfied appellate counsel for Lopez has fully complied with the responsibilities of counsel and no arguable issue exists. (See *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 judgment is affirmed.

BENDIX, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

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