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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR**

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE GOMEZ,

Defendant and Appellant.

B338115

Los Angeles County

Super. Ct. No. PA087810

APPEAL from a judgment of the Superior Court of Los Angeles County, Hilleri G. Merritt., Judge. Affirmed.

Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Steve D. Matthews and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant-appellant Jorge Gomez of willful, premeditated, and deliberate attempts to murder four of his abused ex-girlfriend's family members, as well as various other offenses. Gomez was 21 years old when he committed the offenses.

In this appeal, Gomez argues that the trial court abused its discretion by not properly considering whether, in light of Penal Code section 1170, subdivision (b)(6)(B), his youth warranted imposing lower terms of five years to life on his four attempted murder convictions.¹ Gomez contends that remand is required so the trial court can properly consider the question of his youth when resentencing him. We disagree. The trial court expressly considered Gomez's youth, but concluded that the concerning nature of his crimes outweighed the mitigating factor of his youth. We therefore discern no abuse of discretion, and we affirm the judgment.

PROCEDURAL BACKGROUND

In 2018, a jury convicted Gomez of four counts of willful, premeditated and deliberate attempted murder (§§ 664, 187, subd. (a); counts 1–3 & 8); fleeing a pursuing peace officer (Veh.

¹ Effective January 1, 2022, Assembly Bill No. 124 (AB 124) (2021-2022 Reg. Sess.) amended Penal Code section 1170, subdivision (b)(6), making the low term the presumptive sentence under certain circumstances, including where an offender's youth was a contributing factor in the offense. (Stats. 2021, ch. 695, § 5.3.) This presumption in favor of a low prison term applies if the defendant was under 26 years of age at the time of the offense. (*People v. Flores* (2022) 73 Cal.App.5th 1032, 1038 (*Flores*).) All undesignated statutory references are to the Penal Code.

Code, § 2800.2; count 5); hit and run driving resulting in property damage (Veh. Code, § 20002, subd. (a); count 7); dissuading a witness by force or threat (§ 136.1, subd. (c)(1); count 9); and four counts of assault with a deadly weapon (§ 245, subd. (a)(1); counts 10-13). The jury found various weapon use and great bodily injury allegations true. The trial court originally sentenced Gomez to 15 years to life on each attempted murder count (60 years to life total), plus determinate terms on various other counts and allegations totaling 10 years and 8 months. The court stayed sentencing under section 654 on counts 10 through 13.

On direct appeal, a different panel of this court reversed Gomez's conviction on count seven and affirmed the remaining convictions. (*People v. Gomez* (Dec. 11, 2020, B295182) [nonpub. opn.] (*Gomez I*).² This court also concluded that the trial court erred by sentencing Gomez to 15 years to life on each attempted murder conviction and ordered the sentences corrected. (*Ibid.*)

On remand, in July 2021, the trial court modified the attempted murder sentences to seven years to life on each count. The court imposed a modified sentence of 28 years to life plus a determinate term of 10 years and 8 months.

Gomez timely appealed the sentence imposed at his July 2021 resentencing hearing. At a later resentencing hearing held in November 2022, the trial court modified Gomez's sentence, imposing concurrent instead of consecutive terms on counts five and nine, reducing Gomez's determinate sentence to seven

² We need not take judicial notice of our opinion in *Gomez I* because it is contained in the current appellate record. The same is true of *Gomez II*, which is mentioned later in this opinion.

years.³ Then, in February 2024, a different panel of this court remanded the case for the trial court to apply newly-enacted ameliorative sentencing laws, including AB 124. (*People v. Gomez* (Feb. 6, 2024, B314215) [nonpub. opn.] (*Gomez II*).

On remand, the trial court followed this court’s instructions, and in doing so, reduced Gomez’s determinate sentence by three years, then, after considering Gomez’s youth as a mitigating factor, declined to reduce his sentences on the attempted murder counts.

Gomez timely appealed.

FACTUAL BACKGROUND

The following is a brief excerpt of the much more extensive recitation of facts contained in *Gomez I*. These facts provide context for why the trial court declined to reduce Gomez’s attempted murder sentences to lower terms.

“[Gomez] was convicted of premeditated and deliberate attempts to murder four of his abused ex-girlfriend’s family members[:] [] her mother Gisela C., her aunt Rosa Maria C., and two of her sisters, Leah C. (then three years old) and Aurora C. (11 months old).” (*Gomez I, supra*, B295182.)

“At trial, [Gomez’s] ex-girlfriend, Catherine C., testified (without objection) about three separate occasions on which he hit her, the last of which occurred on December 6, 2016. The jury received evidence of [Gomez’s] misdemeanor domestic violence conviction arising from the December 6 incident, and of an

³ We grant Gomez’s motion to augment the appellate record to include the sentencing memorandum filed by trial defense counsel in September 2022, which the trial court considered at the resentencing hearing held in November 2022.

attendant restraining order requiring [Gomez] to stay away from Catherine. She further testified, and [Gomez] admitted, that they continued seeing each other until the night of December 17, 2016. That night, after [Gomez] dropped Catherine off at her aunt Rosa's house and she failed to respond to his text messages, he came to Rosa's door and continuously insisted on seeing Catherine, refusing to leave until the police arrived in response to her cousin's 911 call. Though Catherine had been living with her mother Gisela, she decided that night to get away from [Gomez] by moving in with her father, and communicated that decision to [Gomez]." (*Gomez I, supra*, B295182.)

"The next afternoon — as established by Gisela's and Rosa's testimony, as well as [Gomez's] admissions—[Gomez] knocked on the door of Gisela's apartment, forced his way in (or refused to leave until Gisela relented), and continuously demanded to see Catherine, despite the women's confirmation that she was at her father's home. When Rosa attempted to call the police, [Gomez] struck the phone from her hand and drew a chef's knife. According to the two women, he then attempted to stab three-year-old Leah, but Rosa shielded Leah with her arm. [Gomez] then struck Rosa with the knife six times, including on her head and chest. When Gisela fled, holding baby Aurora in her arms, [Gomez] chased her and struck her with the knife seven times, perforating one of her lungs. Aurora also sustained a minor wound to her abdomen and two stab wounds to her thigh. Two of Gisela's neighbors witnessed [Gomez's] attack on her and testified that immediately after the attack, [Gomez's] facial expression looked satisfied and remorseless; one of the neighbors additionally testified that during the attack, [Gomez's] expression looked 'really mad' and 'like saying . . . , "Die, you bitch."' After

[Gomez] fled, he sent Catherine a message saying he had done something she would remember him by, along with a picture of his bloody hands. [Gomez] testified that he began using crystal methamphetamine around the time he first hit Catherine, that he had used it on the morning of the attack, and that he had not been thinking during the attack.” (*Gomez I, supra*, B295182.)

DISCUSSION

As noted above, Gomez contends that the trial court abused its discretion under section 1170, subdivision (b)(6)(B) by not properly considering his youth when deciding not to reduce his attempted murder sentences to lower terms. We are unpersuaded.

Relevant law

Section 1170, subdivision (b)(6)(B) “does not require imposition of the lower term in every case in which the defendant was under age 26 at the time the crime was committed.” (*Flores, supra*, 73 Cal.App.5th at p.1039.) Instead, it “establishes a presumption [that the trial court should impose] the lower term if the defendant’s youth was ‘a contributing factor’ in his or her commission of [a] crime ‘unless the court finds that the aggravating circumstances outweigh the mitigating circumstances [such] that imposition of the lower term would be contrary to the interests of justice’” (*Ibid.*) “Discretionary sentencing decisions, such as whether ‘the aggravating circumstances outweigh the mitigating circumstances [so] that imposition of the lower term would be contrary to the interests of justice’ (§ 1170, subd. (b)(6)) are reviewed for an abuse of discretion.” (*People v. Salazar* (2023) 15 Cal.5th 416, 428, fn. 8.)

Under this deferential standard of review, we do not disturb a trial court's sentencing decision unless it was clearly arbitrary or irrational. (*People v. Charles* (2015) 61 Cal.4th 308, 333.)

Analysis

Contrary to Gomez's assertion on appeal, the trial court did not fail to properly consider his youth as a mitigating factor at resentencing. Following this court's remand instructions, the trial court expressly acknowledged its sentencing discretion under various ameliorative laws, including AB 124. The court stated: "I'm aware of the changes in the law. I'm aware of [Gomez] being a youthful offender." The court then concluded, despite the mitigating factor of Gomez's youth at the time of the offenses, that it would best serve the interests of justice to not reduce his sentences on the attempted murder convictions.

In reaching this conclusion, the court explained that the attempted murders committed by Gomez against his ex-girlfriend's family were "brutal, brutal crimes." The court emphasized the concerning nature of how Gomez chased the victims around stabbing them. The prosecutor likewise emphasized to the court that Gomez's conduct in committing the attempted murders was highly troubling and dangerous, noting that "[t]here were multiple victims involved[,] including a baby, that the victims were innocent family members of his ex-girlfriend who he abused, and that the victims had nothing to do with his relationship with his ex-girlfriend. In short, the record demonstrates that the court properly weighed Gomez's youth as a mitigating factor under AB 124, but concluded, given the severity of the attempted murder offenses, that it would not serve the interests of justice to reduce Gomez's sentences on those offenses.

Accordingly, we discern no abuse of discretion in the trial court's sentencing decision.

DISPOSITION

We affirm the judgment.

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TAMZARIAN, J.

We concur:

ZUKIN, P. J.

COLLINS, J.