**PEOPLE v. DEL VILLAR**

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*THE PEOPLE, Plaintiff and Respondent, v. JESUS DEL VILLAR, Defendant and Appellant.*

Court of Appeals of California, Second District, Division Two.

Filed August 6, 2020.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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THE COURT:

In October 2013, facing the possibility of being sentenced to multiple life terms, Jesus Del Villar (defendant) agreed to a plea bargain. In exchange for pleading guilty to various offenses, including one count of voluntary manslaughter, and expressly waiving all postconviction rights including the right to appeal, defendant agreed to a sentence of 37 years and eight months in state prison. In November 2018, defendant filed a petition for writ of habeas corpus, which the trial court denied in June 2019. Defendant appealed, and his appointed counsel filed a brief pursuant to *People v. Wende* (1979) [25 Cal.3d 436](https://www.leagle.com/cite/25%20Cal.3d%20436) (*Wende*), raising no issues. We affirm.

**I. FACTUAL BACKGROUND**

One early morning in August 2011, defendant was driving a red SUV and confronted Marco Gonzalez (Gonzalez), who was a pedestrian. After they exchanged their monikers and street gang affiliations, defendant informed Gonzalez "you're in my hood" and, before driving away, told him "I'm going to get you." Later that same day, defendant was driving the same red SUV, rammed the vehicle Gonzalez was driving, and then shot into it. Gonzalez died instantly from a gunshot wound to the head.

Defendant's stepfather owned the SUV and regularly loaned it to defendant. His stepfather reported it missing in early August after defendant failed to return it to him. Defendant told his stepfather he was stupid for talking to the police and that it was not good for a family member to be a "rat." Defendant made a number of recorded calls to family members from jail. At first, he told his mother to tell his stepfather what to testify about the SUV; later, he told his mother that it would be better if his stepfather did not testify at all. Defendant also asked other family members to arrange an alibi for him for the day of the killing.

**II. PROCEDURAL BACKGROUND**

***A. Information***

The People charged defendant with (1) the murder of Gonzalez (Pen. Code, § 187)[1](https://www.leagle.com/decision/incaco20200807042#fid1); (2) making criminal threats to Gonzalez (§ 422); (3) shooting at Gonzalez's vehicle (§ 246); and (4) dissuading his stepfather from reporting a crime (§ 136.1, subd. (b)(1)). As to the murder and shooting into an occupied vehicle charges, the People alleged that defendant and/or a principal personally and intentionally discharged a firearm causing death (§ 12022.53, subds. (b), (c), (d), and (e)(1)). The People further alleged that all of the offenses were committed "for the benefit of, at the direction of, and in association with a criminal street gang" (§ 186.22, subd. (b)).

The matter proceeded to a jury trial in September 2013.

***B. The plea and sentence***

During the course of the People's case-in-chief, defendant (through his counsel) and the People entered a negotiated plea. In exchange for a sentence of 37 years and eight months, defendant pleaded guilty to voluntary manslaughter (§ 192, subd. (a)); dissuading a witness (§ 136.1, subd. (b)(1)); criminal threats (§422); gross negligent discharge of a firearm (§ 246.3, subd. (a)); he also admitted the personal use of a firearm and gang enhancements.[2](https://www.leagle.com/decision/incaco20200807042#fid2) Before the court accepted the plea, defendant was informed of his constitutional and statutory rights. Defendant was asked, "Do you understand that as part of this plea agreement, you waive all postconviction remedies including but not limited to direct appeal, habeas corpus, writ of error *coram nobis* or a motion to withdraw the plea or any appeal of the rulings on any and all motions in this case either by previous courts or by this court . . .?" Defendant responded in the affirmative. The trial court was "satisfied with the terms of the plea agreement" because it was "fair and justified as to both sides" and told defendant that once he entered the plea it was "a done deal." The court informed defendant "so it's perfectly clear to you if you go back to your bunk tonight and sleep on it after I have accepted this plea, you could not appeal it, you could not appeal the ruling I made on the motion, you could not move to have your plea withdrawn, you could not move to have your attorney fired for incompetence." When asked if he had any questions, defendant responded "No, your honor." The court took defendant's guilty pleas and admissions; found a factual basis for the admissions; and found defendant "knowingly, intelligently, understandingly, and expressly" waived his constitutional rights.

In January 2014, the trial court imposed the agreed upon sentence of 37 years and eight months. The sentence was comprised of 31 years for the voluntary manslaughter (the high term of 11 years, plus 10 years each for the firearm and gang enhancements); a consecutive two years for witness intimidation (one-third the midterm of two years, plus one-third the midterm of four years for firearm enhancement); a consecutive two years and four months for criminal threats (one-third the midterm of two years, plus one-third of the five-year gang enhancement); and a consecutive two years and four months for discharge of a firearm (one-third the midterm of two years, plus one-third of the five-year gang enhancement).

***C. Postconviction proceedings***

In November 2018, defendant filed a petition for writ of habeas corpus in which he argued his sentence was illegal because it violated sections 654—which bars multiple punishments for the same course of conduct, and 1170.1, subdivision (f)—which prohibits imposing multiple enhancements on the same conviction charge. He also argued that his counsel provided ineffective assistance at the time of sentencing by failing to object on those grounds. In February 2019, defendant amended his petition to add a claim based on Senate Bill No. 620 (SB 620) asking the court to exercise its discretion to strike the remaining gun enhancement. In June 2019, following full briefing, the court held a hearing and denied the petition. The court ruled defendant had entered into an agreed upon disposition; there was no error in the taking of the plea; and the court had no basis to exercise its discretion.

Defendant filed a timely notice of appeal.

**III. DISCUSSION**

As stated above, defendant's appointed counsel filed a *Wende* brief, raising no issues. We notified defendant of his counsel's brief and gave him leave to file, his own brief or letter stating any grounds or argument he might wish to have considered. Defendant filed a one-page brief asking this court to review the testimony of trial witnesses and to "look more deeply into [the facts] in order to preserve the integrity of the court." Defendant raised no issues directly related to his petition for writ of habeas corpus.

The superior court correctly ruled that defendant was not entitled to any relief because he did not raise any objections at the time of sentencing, and explicitly waived all postconviction rights to appeal. First, defendant is estopped from raising a section 654 claim. California Rules of Court, rule 4.412(b) states: "By agreeing to a specified term in prison or county jail under section 1170(h) personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates section 654's prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record." The Supreme Court has held that California Rules of Court, rule 4.412 does not conflict with section 654. (*People v. Hester* (2000) [22 Cal.4th 290](https://www.leagle.com/cite/22%20Cal.4th%20290), 295-296 (*Hester*) [agreement to specified sentence operates as implicit waiver of section 654 rights].) *Hester* held that a defendant "who ha[s] received the benefit of [his] bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process." (*Hester,* at p. 295; see also *People v. Couch* (1996) [48 Cal.App.4th 1053](https://www.leagle.com/cite/48%20Cal.App.4th%201053), 1057 ["When a defendant maintains that the trial court's sentence violates rules which would have required the imposition of a more lenient sentence, yet the defendant avoided a potentially harsher sentence by entering into the plea bargain, it may be implied that the defendant waived any rights under such rules by choosing to accept the plea bargain."]; *People v. Shelton* (2006) [37 Cal.4th 759](https://www.leagle.com/cite/37%20Cal.4th%20759), 767 [court must enforce terms of plea and may not modify them just because one party unilaterally requests]; *People v. Mumm* (2002) [98 Cal.App.4th 812](https://www.leagle.com/cite/98%20Cal.App.4th%20812), 815 ["a defendant may waive the right to appeal as part of a plea bargain where the waiver is knowing, intelligent and voluntary."].)

Second, defendant's sentence did not violate section 1170.1, subdivision (f), which prohibits the imposition of additional punishment under more than one enhancement for "being armed with or using . . . a firearm in the commission of a single offense." (*People v. Rodriguez* (2009) [47 Cal.4th 501](https://www.leagle.com/cite/47%20Cal.4th%20501), 508, italics omitted (*Rodriguez*).) Voluntary manslaughter (the only offense for which defendant received multiple enhancements) is a "violent felony" all by itself (§ 667.5, subd. (c)(1)) and is not reliant on any firearm use to convert it from a non-violent offense to a violent felony. In *Rodriguez,* the defendant only became eligible for the gang enhancement because he used a firearm. (*Rodriguez,* at pp. 508-509.)

Third, because we have found no merit to defendant's arguments based on sections 654, and 1170.1, we reject defendant's claim of ineffective assistance of counsel for failing to object on those grounds. (See *People v. Ochoa* (1998) [19 Cal.4th 353](https://www.leagle.com/cite/19%20Cal.4th%20353), 463 [failure to make meritless objections is not ineffective assistance].)

Finally, SB 620 (2017-2018 Reg. Sess.) and the associated amendment to section 12022.53 (Stats. 2017, ch. 682, § 2), apply retroactively only to *nonfinal* judgments (*People v. Harris* (2018) 22 Cal.App.5th 657, 659; *In re Estrada* (1965) [63 Cal.2d 740](https://www.leagle.com/cite/63%20Cal.2d%20740), 745), and do not contain language authorizing resentencing of convictions after they became final. SB 620 became effective January 1, 2018, and the record indicates defendant's conviction became final in 2014, years before the operative date for SB 620.

We have also conducted an independent review of the record pursuant to *Wende, supra,* [25 Cal.3d 436](https://www.leagle.com/cite/25%20Cal.3d%20436) and *People v. Kelly* (2006) [40 Cal.4th 106](https://www.leagle.com/cite/40%20Cal.4th%20106), 123-124) and have concluded there are no arguable issues on appeal.

**DISPOSITION**

The trial court's order denying the petition is affirmed.

LUI, P.J., CHAVEZ, J., HOFFSTADT, J.

**FootNotes**

1. All future statutory references are to the Penal Code unless otherwise stated.

2. The information was amended to change the charge of murder to voluntary manslaughter and, as a consequence, defendant's admission of personal use of a firearm was within the meaning of section 12022.5. The charge of gross negligent discharge of a firearm was also added by interlineation pursuant to the agreed upon plea and disposition.