

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
HECTOR CARMEN CHAVEZ,
Defendant and Appellant.

No. H048182
(Monterey
County Superior
Court No.
SS050514A)

APPELLANT'S OPENING BRIEF

Appeal from An Order After Judgment
The Honorable Pamela L. Butler, Judge

Submitted in accordance with procedures outlined in
People v. Wende (1979) 25 Cal.3d 436 and
People v. Serrano (2012) 211 Cal.App.4th 496

SIXTH DISTRICT APPELLATE PROGRAM

Jonathan Grossman 154452
Staff Attorney
95 S. Market Street, Suite 570
San Jose CA 95113
(408) 241-6171
Fax (408) 241-2877
jonathan@sdap.org

Attorney for Appellant
Hector Carmen Chavez

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APPELLANT'S OPENING BRIEF
STATEMENT OF APPEALABILITY

Mr. Chavez filed a notice of appeal after the denial of his post-judgment motion to strike the firearms enhancements under Senate Bill No, 620. (But see *People v. Hernandez* (2019) 34 Cal.App.5th 323, 326.)

STATEMENT OF THE CASE

An information was filed in 2005, alleging appellant committed three counts of attempted premeditated murder (Pen. Code, §§ 664, 187, subd. (a))¹ with personal use of a firearm (§ 12022.5, subd. (a)) and the gang enhancement (§ 186.22, subd. (b)(1)). For two of the attempted murder counts, it was also alleged appellant personally inflicted great bodily injury (§ 12022.7, subd. (a)). It was further alleged he committed three counts of assault with a firearm (§ 245, subd. (a)(2)) with the same set of enhancements, and one count of brandishing a firearm which was charged as felony because of a gang enhancement (§§ 417, subd.

¹ Unless otherwise specified, all further statutory references are to the Penal Code.

(a)(2), 186.22, subd. (d)). (1CT 217-228.)

Pursuant to a plea bargain, appellant pled guilty to two counts of attempted premeditated murder with a firearms enhancement under section 12022.5 and a gang enhancement for each count. (1CT 234-25 [minute order of plea], 236-243 [plea agreement and plea waiver form].)

On November 22, 2005, the court sentenced appellant to serve 25 years to life. It imposed 15 years to life for counts one and two, plus ten years for the firearms enhancement concurrent to each other. (1CT 246-247, 257-258.)

Appellant filed a petition on October 10, 2018 to commence a *Franklin* proceeding.² (1CT 257-267.) A court hearing was held on May 24, 2019. (2CT 305-306.)

Appellant filed on November 1, 2019 a motion to strike the firearms enhancements under Senate Bill No. 620 ((2017-2018 Reg. Sess.) § 1, effective January 1, 2018)³ and under the double jeopardy clause (U.S. Const., 5th and 14th Amends.; Cal. Const., art. I, § 15). (2CT 314-317.) The prosecution filed an opposition, stating the conviction was final; it also pointed out there was a plea agreement. (2CT 324-335.) The court denied the motion on April 22, 2020. (2CT 338-339.) It denied the motion because the conviction was final; even if it were not final, the court said it would not strike the enhancement. Further, the firearms

² See *People v. Franklin* (2016) 63 Cal.4th 261, 284.

³ Senate Bill No. 620 amended sections 12022.5 and 12022.53 to give the sentencing court discretion to strike the firearms enhancement.

enhancement was part of a plea bargain. (RT 3-4.) A notice of appeal was filed on June 4, 2020. (2CT 340-341.)

STATEMENT OF THE EVIDENCE

The facts are irrelevant to the reason why the trial court denied relief on appellant's motion.

ANALYSIS OF THE LAW

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, counsel requests that this court independently review the entire record on appeal. In *People v. Serrano* (2012) 211 Cal.App.4th 496, this court decided that a defendant is not entitled to a review of the record by the court of appeal after the appeal of his conviction. (*Id.* at pp. 500-504.) This court said it that in an appeal of an order after judgment raising no issues, “[u]pon receipt of the brief from counsel, the court will inform defendant of his right to file a supplemental brief. The court will then either retain the appeal or dismiss it on our own motion.” (*Id.* at pp. 503-504.)

Appellant has been advised by counsel of his opportunity to inform the court of any issues he may think his case contains and his right to file a supplemental brief with this court. Counsel has reviewed the entire record on appeal and remains available to brief any issue upon the court's request.

CONCLUSION

Appellant respectfully requests that this Court independently review the entire record on appeal pursuant to *People v. Wende, supra*, 25 Cal.3d 436 or alternatively inform appellant of his right to file a supplemental brief pursuant to *People v. Serrano, supra*, 211 Cal.App.4th 496.

DATED: September 24, 2020

Respectfully submitted,
SIXTH DISTRICT APPELLATE PROGRAM

By: /s/ Jonathan Grossman

Jonathan Grossman
Attorney for Appellant
Hector Carmen Chavez

DECLARATION OF COUNSEL

I, Jonathan Grossman declare:

1. I am an attorney of law admitted to practice before all courts of California, and am appointed counsel for appellant Hector Carmen Chavez.

2. I have thoroughly reviewed the record and the files in this case.

3. I have determined that a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *People v. Serrano, supra*, 211 Cal.App.4th 496 should be filed.

4. I have written appellant advising him that a brief, pursuant to *Wende* and *Serrano*, would be filed. I also informed him of his right to file a supplemental brief. I sent him the record on appeal to aid in the preparation of any supplemental brief.

5. I have also advised appellant that he has a right to ask the court to have present counsel relieved and another attorney appointed.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that it was executed on September 24, 2020 at San Jose, California.

By: /s/ Jonathan Grossman
Jonathan Grossman

CERTIFICATION OF WORD COUNT

I, Jonathan Grossman, certify that the attached Appellant's Opening Brief contains 1081 words.

By: */s/ Jonathan Grossman*
Jonathan Grossman

DECLARATION OF SERVICE BY E-MAIL AND U.S. MAIL

Case Name: People v. Chavez Case No.: H048182

I declare that I am over the age of 18, not a party to this action and my business address is 95 S. Market Street, Suite 570, San Jose, California 95113. On the date shown below, I served the within APPELLANT'S OPENING BRIEF to the following parties hereinafter named by:

X BY ELECTRONIC TRANSMISSION - I transmitted a PDF version of this document by electronic mail to the party(s) identified on the attached service list using the email address(es) indicated.

Served electronically via TrueFiling.com:

Attorney General's Office	Court of Appeal
455 Golden Gate Ave., Ste 11,000	333 W. Santa Clara St.
San Francisco, CA 94102-7004	Suite 1060, 10th Floor
[attorney for respondent]	San Jose, CA 95113
SFAGDocketing@doj.ca.gov	Sixth.District@jud.ca.gov

District Attorney's Office
230 Church Street
Modular No. 3
Salinas, CA 93901
DigitalDiscovery@co.monterey.ca.us

Served electronically via GreenFiling.com:

Superior Court, Appeals Clerk
Criminal Division
240 Church Street, Room 318
Salinas, CA 93902

X BY MAIL - Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California, addressed as follows:

Hector Chavez, A00001
State Prison
P.O. Box 1
City, CA 90000

I declare under penalty of perjury the foregoing is true and correct.
Executed this 25th day of September, 2020, at San Jose,
California.

/s/ Priscilla A. O'Harra
Priscilla A. O'Harra