



## People v. Hayden

2003 | Cited 0 times | California Court of Appeal | September 24, 2003

### NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

This is an appeal after resentencing. In a nonpublished opinion (*People v. Hayden* (Sept. 23, 2002, C038685)), this court remanded for resentencing because the trial court might have concluded it had only two sentencing options and failed to consider its sentencing options under *People v. Garcia* (1999) 20 Cal.4th 490 (*Garcia*), which permitted striking one or both of defendant's strike priors as to some but not all of the five counts of second degree robbery (Pen. Code, § 211).<sup>1</sup> (*Garcia*, supra, 20 Cal.4th at pp. 492-493.)

The trial court resentenced defendant as follows: count one, 25 years to life; count two, 10 years (the upper term of five years, doubled for a strike prior); counts four, five, and six, two years each (a consecutive one-third the midterm or one year, doubled for a strike prior), for a total of six years; one five-year enhancement pursuant to section 667, subdivision (a); and a stay of another section 667, subdivision (a) enhancement.

Defendant appeals.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

The trial court imposed \$50 in crime prevention fines (Pen. Code, § 1202.5) (\$10 for each of the five counts of second degree robbery) and a \$35 county penalty assessment (Gov. Code, § 76000 et seq.) but not the mandatory state penalty assessment (§ 1464). Section 1202.5, subdivision (a) provides, in relevant part, as follows: "In any case in which a defendant is convicted of any of the offenses enumerated in Section 211, 215, 459, 470, 484, 487, 488, or 594, the court shall order the defendant to pay a fine of ten dollars (\$10) in addition to any other penalty or fine imposed. . . ."

Only one section 1202.5, subdivision (a) fine was authorized. The language of the statute limits the



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fine to "any case," not "any count." We will modify the judgment to correct this unauthorized sentence, reducing the section 1202.5, subdivision (a) fine to \$10 as well as correcting the corresponding penalty assessments (\$10 state, \$7 county). (People v. Scott (1994) 9 Cal.4th 331, 354.)

We note an error in preparation of the abstract of judgment for the determinate term and the amended abstract of judgment for the indeterminate term. Both incorrectly refer to defendant's offenses as first degree robbery. Defendant was convicted of five counts of second degree robbery. We will order the abstracts corrected accordingly.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

### DISPOSITION

The judgment is modified to provide for a \$10 crime prevention fine (Pen. Code, § 1202.5), a \$10 state penalty assessment (Pen. Code, § 1464), and a \$7 county penalty assessment (Gov. Code, § 76000). The trial court is directed to prepare an amended abstract of judgment accordingly, as well as correcting defendant's offenses from first to second degree robberies on all counts, and to forward certified copies of the amended abstracts to the Department of Corrections. As modified, the judgment is affirmed.

We concur:

SCOTLAND, P.J.

MORRISON, J.

1. All further statutory references are to the Penal Code unless otherwise indicated.

