

MINUTE ORDER
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 03/05/18

CASE NO. BA274025

THE PEOPLE OF THE STATE OF CALIFORNIA
VS.
DEFENDANT 01: JOEL DEANDRE ROBINSON

INFORMATION FILED ON 12/06/04.

COUNT 01: 246 PC FEL
COUNT 02: 245(A)(2) PC FEL
COUNT 03: 245(A)(2) PC FEL
COUNT 04: 12021(A)(1) PC FEL
COUNT 05: 12025(A)(2) PC FEL

ON 03/05/18 AT 830 AM IN CENTRAL DISTRICT DEPT 124

CASE CALLED FOR JUDICIAL ACTION

THIS IS A SECOND STRIKE CASE.

PARTIES: DOUGLAS SORTINO (JUDGE) FRANKLIN MARIDUENA (CLERK)
NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

THE COURT IS IN RECEIPT OF THE PETITION OF HABEAS CORPUS, THE
RESPONDENT'S INFORMAL RESPONSE, AND THE PETITIONER'S INFORMAL
REPLY.

THE MATTER IS SET FOR STATUS REGARDING HABEAS CORPUS PETITION AN
AND SETTING FOR RESENTENCING FOR 4/9/18 IN DEPARTMENT 124 AT
8:30 A.M.

A COPY OF THIS MINUTE ORDER IS SENT VIA U.S. MAIL TO:

LAW OFFICE OF COREY EVAN PARKER
1230 ROSECRANS AVE, SUITE 300
MANHATTAN BEACH, CA90266

DISTRICT ATTORNEY'S OFFICE
HABEAS CORPUS LITIGATION TEAM

CASE NO. BA274025
DEF NO. 01

DATE PRINTED 03/05/18

320 W. TEMPLE ST, ROOM 540
LOS ANGELES, CA 90012

NEXT SCHEDULED EVENT:
04/09/18 830 AM FURTHER PROCEEDINGS DIST CENTRAL DISTRICT DEPT 124

PAGE NO. 2

JUDICIAL ACTION
HEARING DATE: 03/05/18



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF PROSECUTION SUPPORT OPERATIONS • HABEAS CORPUS LITIGATION
TEAM

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
PAMELA BOOTH • Assistant District Attorney

KELLYJEAN CHUN • Director

COPY

February 15, 2018,

Hon. Douglas Sortino
Los Angeles Superior Court
Judge of the Superior Court
210 W. Temple Street
Los Angeles, CA 90012

RE: *In re Joel D. Robinson*
BA274025

Dear Judge Douglas Sortino:

Joel D. Robinson (Petitioner) was convicted¹ in BA274025 of the following five counts: 1) Shooting at an occupied vehicle in violation of Penal Code² section 246; 2) Assault with a firearm in violation of section 245, subdivision (a)(2); 3) Assault with a firearm in violation of section 245, subdivision (a)(2); 4) Possession of a firearm by an ex-felon in violation of section 12021, subdivision (a)(1); and 5) Carrying a concealed weapon in violation of section 12025, subdivision (a)(2). It was further alleged that Petitioner committed all of the above offenses for the benefit of, at the direction of, and in association with a criminal street gang within the meaning of section 186.22, subdivision (b)(1). It was further alleged as to counts 2 and 3 that Petitioner personally used a firearm within the meaning of section 12022.5, subdivision (a)(1). Petitioner also had a prior strike conviction and was charged that this conviction qualified for an additional sentencing enhancement pursuant to section 667, subdivision (a)(1).

After the jury found Petitioner guilty of all charges and allegations, the trial court sentenced to Petitioner to a total of 33 years in state prison. Count 2 was the principal term which was calculated as follows: The Court imposed the high term of four years for section 245, subdivision (a)(2). This sentence was doubled pursuant to the strike prior. An additional 10 years was imposed pursuant to section 186.22, subdivision (b)(1)(C) in addition to 10 years pursuant to section 12022, subdivision (a)(1) and another five years for section 667 (a)(1). Counts 1 and 3 were imposed concurrently while counts 4 and 5 merged pursuant to section 654.

¹ Attached to this informal response letter as Exhibit 1 is a copy of *People v. Robinson* (September 7, 2006, B184747) [nonpub. opn.]. This opinion is incorporated by reference as if fully set forth herein.

² All further statutory references will be to the Penal Code unless indicated otherwise.

Petitioner filed a petition for writ of habeas corpus challenging the fact that the trial court imposed 10 years in state prison pursuant to Penal Code section 186.22, subdivision (b)(1) in addition to the 10 years pursuant to Penal Code section 12022.5, subdivision (a)(1) in both counts 2 and 3.

This Court ordered the Los Angeles County District Attorney's office to respond to the Petitioner's writ on the issue of whether Petitioner should be resentenced pursuant to the holding in *People v. Rodriguez* (2009) 47 Cal.4th 501 (*Rodriguez*).

After reviewing the petition, the exhibits attached to the petition (including the sentencing transcripts and abstract of judgment) and relevant case law, the Los Angeles County District Attorney's office concurs with Petitioner's assertion. Pursuant to the holding in *Rodriguez*, Petitioner should not have been sentenced to both sentencing enhancements pursuant to section 186.22, subdivision (b)(1)(C), and section 12022.5, subdivision (a)(1), in both Counts 2 and 3. Therefore, Petitioner is entitled to be resentenced.

The sentencing court, after hearing the evidence, determined that Petitioner should be sentenced to 33 years in state prison. The rationale for choosing the high term was "[Petitioner's] prior criminal history includes multiple felonies apart from the prior that was alleged and admitted here.' The court further stated that it based the decision to impose the upper term on the gun use enhancement on the fact that '[Petitioner] was on parole at the time of the commission of the offense.'" (Ex. 1.)

In light of the sentencing court's findings, Respondent respectfully requests this Court to sentence Petitioner to 31 years 4 months calculated as follows: The Court can impose the high term (seven years) for section 246, which would be doubled pursuant to the strike prior on count 1. An additional five years can be imposed pursuant to section 186.22, subdivision (b)(1)(B) in addition to another five years pursuant to section 667, subdivision (a)(1), for a total of 24 years. This Court can impose Count 2 consecutively for an additional five years four months with an additional two years for Count 3, with the allegation to run concurrently.

Sincerely yours,

JACKIE LACEY
DISTRICT ATTORNEY

By:



Eileen Kim
Deputy District Attorney
Habeas Corpus Litigation Team