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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DESTINY FRKLIC,

Defendant and Appellant.

E080427

(Super. Ct. No. FWV20002259)

OPINION

APPEAL from the Superior Court of San Bernardino County. Kyle Brodie, Judge.

Dismissed.

Reed Webb, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant and appellant Destiny Frklic appeals the trial court's postjudgment order denying her Penal Code¹ section 1172.6 (formerly section 1170.95)² petition for resentencing under the procedures established by Senate Bill Nos. 775 and 1437. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), requesting this court to conduct an independent review of the record. In addition, defendant has had an opportunity to file a supplemental brief with this court and has not done so. Because defendant's counsel filed a brief raising no issues and defendant was notified that failure to timely file a supplemental brief may result in the dismissal of the appeal as abandoned and was given an opportunity to file a personal supplemental brief but failed to do so, we decline to exercise our discretion to conduct an independent review of the record in the interest of justice and dismiss the appeal. (*People v. Delgadillo* (2022) 14 Cal.5th 216, 228, 232 (*Delgadillo*.)

II.

FACTUAL AND PROCEDURAL BACKGROUND³

On June 6, 2020, defendant along with her codefendants Samantha Madriz, Andrew Martinez, and Anthony Angel Perez went to a hotel where one of defendant's codefendant's fatally shot the unsuspecting victim who was supposed to meet Madriz in a room at the hotel.

On July 1, 2020, defendant, along with the three other codefendants, was charged with murder (§ 187).

Prior to the preliminary hearing, on May 24, 2021, defendant negotiated a plea agreement of no contest to one count of voluntary manslaughter (§ 192, subd. (a)). In exchange, defendant was promised a stipulated sentence of six years in prison, and the People agreed to dismiss another felony criminal matter against defendant. The plea agreement form indicated that defendant “admits she aided [and] abetted in the homicide.”

On June 23, 2021, defendant was sentenced in accordance with her negotiated plea agreement to six year in state prison with credit for time served, and the People dismissed the other felony case against defendant.

On October 14, 2022, defendant filed a petition for resentencing pursuant to section 1172.6 and requested appointment of counsel to represent her. The petition alleged that defendant was charged with murder that allowed the prosecution to proceed against her under a theory of felony murder or murder under the natural probable consequences doctrine; that she accepted a plea offer to manslaughter in lieu of a trial to

¹ All future statutory references are to the Penal Code.

² Effective June 30, 2022, the Legislature renumbered section 1170.95 as section 1172.6, with no substantive change in text. (Stats. 2022, ch. 58, § 10.)

³ A summary of the factual background is taken from the probation officer’s report.

avoid a murder conviction; that she could not now be convicted of murder because of changes in the law.

Upon receipt of the petition, the trial court appointed the attorney who had previously represented defendant at the time of the plea.

A hearing to determine eligibility for resentencing was held on December 16, 2022. At that time, the prosecutor noted that it had not submitted a formal response as defendant had recently pleaded no contest. The court indicated that the crime occurred and defendant had pleaded no contest after the changes in the law and made the following observations: “In the plea form signed personally by the defendant, it includes the following notation -- which is, by the way, somewhat unusual for our plea forms -- but it does include the following notation, ‘The defendant admits she aided and abetted in the homicide.’” The prosecutor, who had represented the People at the time the plea was taken, responded that “we did that to make her fall outside of the [Senate Bill No.] 1437 statute.”

The court thereafter inquired, “So it seems prescient perhaps that that factual finding was admitted to at the time of the hearing. That strikes me as dispositive on this question, but is there a way it’s not? I mean, is there any way she’s established a prima facie case for relief, given the timing and that statement in the plea form?” Defense counsel conceded, stating, “I think the Court might be correct that it would kind of end the prima facie question, [i]f she is an aider and abettor. And by her putting that in there puts her outside of that opportunity for resentencing.” The court denied the petition,

explaining as follows: “. . . No. 1 , the crime occurred after the amendments to murder statute; granted before the amendments to the voluntary manslaughter statute, which arguably could bring in something in certain cases -- but her expressed admission that I referred to, namely, that she aided and abetted the homicide, shows as a matter of law, she is not entitled to resentencing relief. So I am going to deny the petition. And I don't see a need for a formal written response on this particular case.” Defendant timely appealed.

III.

DISCUSSION

After defendant appealed, appointed appellate counsel filed a brief under the authority of *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, setting forth a statement of the case and a summary of the procedural background. Counsel considered potential issues on appeal but found no specific arguments as grounds for relief, and requests that we exercise our discretion and independently examine the appellate record for any arguable issues. Under *Anders*, which requires “a brief referring to anything in the record that might arguably support the appeal,” (*Anders, supra*, at p. 744) counsel raises the issues of whether the plea lacked an explicit admission of an intent to kill and whether the court erred in failing to provide a written statement of reasons for denying the petition at the prima facie stage.

We offered defendant an opportunity to file a personal supplemental brief, and she has not done so.

In *Delgadillo, supra*, 14 Cal.5th 216, the California Supreme Court recently held that *Wende* and *Anders* procedures do not apply in appeals from the denial of a section 1172.6 postjudgment petition. (*Delgadillo, supra*, at pp. 224-226.) Thus, we need not examine the entire record ourselves to look for arguable grounds for reversal. (*Id.* at p. 228.) Because defendant’s counsel filed a brief raising no issues, and defendant was given an opportunity to file a personal supplemental brief but declined, we may dismiss the appeal as abandoned. (*Id.* at p. 232.)

Although we have discretion to conduct *Wende* review even when it is not required (*Delgadillo, supra*, 14 Cal.5th at p. 232), this case does not call for us to exercise our discretion to independently examine the record for arguable issues. “Independent review in *Wende* appeals consumes substantial judicial resources,” and “[t]he state . . . has an interest in an ‘economical and expeditious resolution’ of an appeal from a decision that is ‘presumptively accurate and just.’” (*Delgadillo, supra*, at p. 229.) Moreover, defendant’s record of conviction clearly shows that she is categorically ineligible for relief without examining the entire record. Thus, reading every page of the record to look for arguable grounds for reversal is futile. Defendant admitted that she had aided and abetted in the murder. As such, it is impossible for defendant to make a prima facie case for relief under section 1172.6. The trial court correctly denied defendant’s section 1172.6 petition for resentencing. Accordingly, we dismiss the appeal.

IV.
DISPOSITION

The appeal is dismissed.

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CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.