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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.

ISAAC CASTILLO,

Defendant and Appellant.

E081485

(Super.Ct.No. FSB17000145)

OPINION

APPEAL from the Superior Court of San Bernardino County. Harold T. Wilson, Jr., Judge. Affirmed.

Isaac Castillo, in pro. per.; Aaron J. Schechter, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Isaac Castillo appeals from the trial court's order denying his petition for resentencing pursuant to Penal Code¹ former section 1170.95 (now renumbered section 1172.6). For the reasons set forth *post*, we affirm.

STATEMENT OF THE CASE

On January 5, 2018, a jury found defendant guilty of: (1) first degree murder under section 187 (count 1), and found true the allegations that defendant discharged a firearm causing great bodily injury under section 12022.53, subdivision (d), used a firearm under section 12022.53, subdivision (b), and discharged a firearm under section 12022.53, subdivision (c); (2) first degree burglary under section 459 (count 2), and found true the allegation that defendant personally used a firearm under section 1203.06, subdivision (a)(1), and 12022.5, subdivision (a); (3) making a terrorist threat under section 422, subdivision (a) (count 3)), and found true the allegation that defendant personally used a firearm under section 1203.06, subdivision (a)(1), and 12022.5, subdivision (a); (4) false imprisonment by force or violence under section 236 (counts 5, 6), and found true that defendant personally used a firearm under 1203.06, subdivision (a)(1), and section 12022.5, subdivision (a); and (5) unlawful possession of a firearm by a person previously convicted of a felony under section 29800, subdivision (a) (count 7).

Defendant admitted that he had suffered three prior serious and violent felony convictions under section 667, subdivision (a)(1), and section 1170.12, subdivisions (a) to (d).

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

On February 5, 2018, the trial court sentenced defendant to a total prison term of 205 years to life.

Defendant appealed, and on September 6, 2019, this court affirmed the judgment in an unpublished opinion. (*People v. Castillo* (Sept. 6, 2019, E069953) [nonpub. opn.])

On August 11, 2022, defendant filed a petition for resentencing under section 1172.6; the People filed opposition on September 20, 2022. On March 1, 2023, defendant filed a brief in support of his petition for resentencing under section 1172.6.

At a hearing on March 3, 2023, the trial court denied defendant's petition. When the hearing commenced, the trial court informed both the prosecutor and defense counsel that the court had reviewed all the motions and responses filed. After the court allowed both the prosecutor and defense counsel to submit additional argument, the court stated:

“The Court has taken judicial notice of the court file in this case. The Court has reviewed among other things the second amended information, the jury instructions, and the verdict forms. The ruling will be based upon those records of convictions as mentioned by the Court. The Court notes that there are no alternative theories of murder other than [defendant] was the actual shooter and killer in this case. There's just one count of 187 alleged along with Penal Code Section 459, Penal Code Section 422, two counts, two counts of Penal Code Section 236, and one count of Penal Code Section 29800 (a)(1). Again, no additional theories of murder or charges of murder are set forth. The Court has also reviewed the jury instructions and the verdict form. After that review, the Court finds there's no additional theories of murder alleged or argued. With respect to the verdict forms again as [the prosecutor] set out, the jury did come back with a

finding of guilty on first degree murder. The jury also found a special finding that [defendant] was in fact the actual shooter and killer by intentionally discharging a firearm causing death as to Count Number 1 so as a matter of law, the Court finds that [defendant] is not eligible. Prima [facie] showing has not been made. Find that [defendant] was the actual shooter and the killer in [the] case. So with respect to the 1172.6 petition, Court finds that the prima [facie] showing has not been shown so with that, it's denied.

“[Defense counsel], with respect to the Court exercising discretion pursuant to 1385, the Court will note that on the sentencing date on February 5th, 2018, the defense in fact did argue an oral motion to strike the strikes, the 1170.12 a through d strikes. The Court denied that motion. With respect to exercising discretion, the Court is not going to exercise discretion with respect to the strikes as indicated that was previously heard by this court. The use of the firearm, going under 12022.53 et al., the Court is going to not exercise discretion with respect to those allegations, and the 667(a)(1), the nickel prior, the Court will not exercise discretion although it understands it does have discretion to strike based upon the nature of the offense, the callousness and the aggravating factors that were present. So Court will not exercise any discretion with respect to the allegations.”

On March 13, 2023, defendant, in support of his petition for resentencing under section 1172.7, filed a one-page handwritten letter with supporting documents in the trial court.

On April 18, 2023, the trial court held a hearing to address defendant's letter. The court acknowledged that it had received defendant's letter, and "attached to the letter was some certificates and programming [defendant] completed. He wished the Court to consider that with respect to the hearing." The court then went on to state: "I'm going to note that the Court addressed that hearing on March 3rd. At that time, the Court found there was not a prima facie showing. So the Court denied the petition under 1172.66, so at this point, the letter is moot."

The court, however, noted that defendant's letter and attachments "would not in any way impact the Court's decision."

On June 8, 2023, defendant filed his notice of appeal.

On August 30, 2023, we granted defendant's request for judicial notice filed on August 14, 2023. We took judicial notice of the record in defendant's prior appeal, case No. E069953.

DISCUSSION

Counsel has filed a supplemental brief under the authorities of *People v. Wende* (1979) 25 Cal.3d 436, *Anders v. California* (1967) 386 U.S. 739, and *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*). In the brief, pursuant to *Anders, supra*, appellate counsel has identified the following issue to assist the court in its search of the record for error: "Did the trial court err in denying appellant's petition at the prima facie stage?"

On August 15, 2023, we sent notice to defendant regarding the filing of a *Delgadillo* brief, as follows: "Counsel for appellant has filed a brief stating no arguable

issues can be found. Because this is an appeal from the denial of a post-conviction proceeding, this court is not required to conduct an independent review of the record but may do so in its discretion. (*People v. Delgadillo* (2022) 14 Ca1.5th 216 []; *People v. Serrano* (2012) 211 Ca1.App.4th 496.) The appellant is personally granted 30 days to file any supplemental brief deemed necessary. If appellant files a supplemental brief, this court will evaluate the specific arguments presented in that brief in its opinion. (*Delgadillo, supra*, 14 Ca1.5th 216[.]) Failure to timely file a supplemental brief may result in the dismissal of the appeal as abandoned.”

On August 30, 2023, defendant filed a three-page handwritten supplemental brief. In the brief, defendant challenges the underlying conviction. “My case is an actual innocents [*sic*] case upon review. You will see that my case was poorly handled.” Thereafter, defendant provides facts related to the underlying case.

Defendant’s argument is without merit because, as provided *ante*, “[t]he jury [] found a special finding that [defendant] was in fact the actual shooter and killer by intentionally discharging a firearm causing death as to Count Number 1.” Hence, because defendant was the actual shooter and killer, as a matter of law, defendant is ineligible for relief under section 1172.6.

Moreover, as discussed *ante*, defendant appealed from the underlying case, and in 2019, this court affirmed the judgment. (*People v. Castillo, supra*, E069953.) In the appeal, defendant made a similar argument that “there was insufficient evidence presented to support his convictions of first degree murder and making terrorist threats.” (*Id.* at *2.) This court held that “there was reasonable, credible evidence supporting the

jury's verdict based on [a witness's] testimony in court and before trial. Further, additional corroborating evidence supported [the] testimony." (*Id.* at *18.) Defendant's argument, therefore, has already been addressed in the prior appeal.

Based on the above and our independent review of the record, we find that the trial court correctly determined defendant is ineligible for relief under section 1172.6.

(*Delgadillo, supra*, 12 Cal.5th at p. 233.)

DISPOSITION

The order denying defendant's petition for resentencing under section 1172.6 is affirmed.

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MILLER
Acting P. J.

We concur:

CODRINGTON
J.

RAPHAEL
J.