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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.

WILLIAM LESLIE POWELL,

Defendant and Appellant.

E083370

(Super.Ct.No. RIF1601767)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant William Leslie Powell appeals from a postjudgment order denying his petition for resentencing under Penal Code¹ section 1172.6. His appellate counsel filed a brief under *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*), and defendant filed a supplemental brief. We have reviewed the contentions defendant raised in his supplemental brief and affirm the order.

PROCEDURAL BACKGROUND

On August 2, 2019, defendant was charged by first amended information with murder (§ 187, subd. (a), count 1) under special circumstances, in violation of section 190.2, subdivision (a)(17)(B), and kidnapping (§ 209, subd. (a), count 2). It was further alleged, as to both counts, that defendant personally used a firearm, within the meaning of sections 12022.53, subdivision (b) and 1192.7, subdivision (c)(8).

On September 3, 2019, defendant entered a plea agreement and pled guilty to count 1, in exchange for the dismissal of the remaining count and allegations. In accordance with the plea agreement, the court sentenced defendant to 25 years to life in state prison and dismissed the remaining count and allegations.

On May 22, 2023, defendant filed an in propria persona petition for resentencing, pursuant to section 1172.6.

On January 12, 2024, the court held a hearing on the petition. The prosecutor stated that he sent defense counsel documents indicating that defendant pled in 2019,

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

after the effective date of section 1172.6. Defense counsel submitted. The court noted that the information was filed on August 2, 2019, which was eight months after the operative date of section 1170.95 (later renumbered to section 1172.6), and the plea form was signed by all parties on September 3, 2019, which was after the operative date of the amendments to the law of murder. As such, the court concluded that defendant was ineligible for relief under section 1172.6 and denied the petition.

Defendant filed a timely notice of appeal of the denial of the petition.

DISCUSSION

Defendant was provided notice under *Delgadillo* and advised that counsel filed a brief stating no arguable issues could be found, and that because this is an appeal from a postconviction proceeding, this court is not required to conduct an independent review of the record but may do so in its discretion. (*Delgadillo, supra*, 14 Cal.5th at p. 232.) The notice advised him that he could file a supplemental brief within 30 days. Defendant filed a supplemental brief. Where a defendant has filed a supplemental brief, a court of appeal need only evaluate the specific arguments presented in the brief. (*Ibid.*) “The filing of a supplemental brief or letter does not compel an independent review of the entire record to identify unraised issues.” (*Ibid.*)

Defendant’s eight-page handwritten brief raises unintelligible and non-meritorious claims. For example, he claims: “The courts should note that [he] had been incarcerated 4 years ... prior ‘1170.95’ being reamened [*sic*] to ‘1172.6’. SB 775. So there is no possible way [his] prior defense attorney could advise [him] of ‘SB 1437’ that came out

January 1 of 2019. Soley [*sic*] because defendant filed for relief under ‘SB 775’ which only came out November 1, 2022. ... Courts should have seen and made the appropriate changes according to the 14th Amendment of [his] due process rights.” Defendant also claims he is eligible for resentencing due to him “being a youth offender with the tabe [*sic*] score of less than 2.0 at the time of plea deal,” his defense attorney used coercion and told him to take a plea deal, and he [defendant] did not know how to read and write at the time. Defendant further claims he cannot be convicted of “proactive act murder [*sic*] premised on malice imputed” to him based on his participation in a crime, under section 1172.6, subdivision (a), and that he did not “harbored the mental state of malice.”

The trial court correctly found that defendant was ineligible for resentencing as a matter of law. “Effective January 1, 2019, the Legislature passed Senate Bill No. 1437 (2017–2018 Reg. Sess.) (Senate Bill No. 1437). This amended both the felony-murder rule and the natural and probable consequences doctrine to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life. [Citation.] Senate Bill No. 1437 also added Penal Code former section 1170.95, now renumbered as section 1172.6. This created a procedural mechanism for those convicted under the former law to seek retroactive relief.” (*People v. Reyes* (2023) 97 Cal.App.5th 292, 295 (*Reyes*).

In *Reyes, supra*, 97 Cal.App.5th 292, the court held the procedure for seeking resentencing relief set forth in section 1172.6 does not apply to defendants who were

convicted after the effective date of the current law. (*Id.* at pp. 296, 298-299.) The court stated: “[S]ection 1172.6 ‘provides a procedure whereby persons convicted of murder under a now-invalid theory may petition to vacate their conviction.’” (*Id.* at pp. 298-299; *People v. Lewis* (2021) 11 Cal.5th 952, 957.)

The *Reyes* court explained that the appellant in that case was ineligible for resentencing for two reasons. First, in order to be resentenced, “the charging document filed against appellant must have allowed the prosecution to proceed under a theory of murder liability that is now invalid.” (*Reyes, supra*, 97 Cal.App.5th at p. 298; § 1172.6, subd. (a)(1).) However, the prosecution filed the information against the appellant in 2020, after the effective date of section 1172.6. “Thus, when this criminal proceeding was initiated, the prosecution was precluded from proving the murder charge under a theory of imputed malice.” (*Reyes*, at p. 298.) Second, the *Reyes* court explained that, in order to be resentenced, a petitioner must allege that he could not presently be convicted of murder “because of changes” brought by Senate Bill No. 1437. (§ 1172.6, subd. (a)(3); *Reyes, supra*, 97 Cal.App.5th at p. 298.) The court noted: “Appellant was not convicted under the prior law, which permitted a theory of murder based on imputed malice. Instead, he entered his change of plea in 2021, with the advice and consent of legal counsel. When appellant entered his change of plea, the now invalid theories of murder liability had already been eliminated.” (*Ibid.*)

For the reasons outlined in *Reyes*, defendant here does not qualify for relief under section 1172.6, since he was charged and convicted in 2019, after the effective date of the

current law.² He is simply “not the type of defendant this retroactive procedure was intended to benefit.” (*Reyes, supra*, 97 Cal.App.5th at p. 299.) Thus, the court properly denied his resentencing petition.

DISPOSITION

The trial court’s order denying defendant’s resentencing petition is affirmed.

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FIELDS
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.

² We note that the passage of Senate Bill 775, expanding the scope of relief under section 1172.6 to individuals convicted of attempted murder and voluntary manslaughter, does not change the analysis. (See Stats. 2021, ch. 551, § 1, subd. (a); § 1172.6, subd. (a).)