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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE ELEX BRIDGEFORTH,

Defendant and Appellant.

B276147

(Los Angeles County
Super. Ct. No. TA119012)

PURPORTED APPEAL from an order of the Superior Court of Los Angeles County treated as a petition for writ of mandate. Michael J. Shultz, Judge. Petition granted.

George Elex Bridgeforth, in pro. per.; and Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy

Attorney General, and David A. Wildman, Deputy Attorney General, for Plaintiff and Respondent.

George Elex Bridgeforth purports to appeal from an order denying his petition for postconviction discovery on the ground that the superior court abused its discretion by applying the wrong standard in denying the petition. (Pen. Code,¹ § 1054.9.) The trial court's order is not appealable. Nevertheless, in the interests of justice and judicial economy, we treat the appeal as a petition for writ of mandate, consider the merits of Bridgeforth's contention, and grant the petition.

PROCEDURAL BACKGROUND

Bridgeforth was convicted² following a jury trial of first degree murder (§ 187, subd. (a)), attempted voluntary manslaughter (§§ 192, subd. (a), 664), shooting at an occupied vehicle (§ 246), felon in possession of a firearm (§ 12021, subd. (a)), and assault with a firearm (§ 245, subd. (a)(2)). The jury found the special circumstance and firearm allegations true, and Bridgeforth admitted four prior strike convictions and one prior serious felony conviction (§§ 667, subd. (a), 667, subds. (b)–(i), 1170.12, subds. (a)–(d)). He was sentenced to a determinate prison term of 15 years for the firearm and prior serious felony

¹ Undesignated statutory references are to the Penal Code.

² The following background concerning Bridgeforth's conviction, sentence, and prior appeal is drawn from our opinion in *People v. Bridgeforth* (Oct. 29, 2015, B253224) [nonpub. opn.]. (Cal. Rules of Court, rule 8.1115(b)(1).)

enhancements (§§ 12022.53, 667, subd. (a)(1)), followed by three consecutive indeterminate sentences of life without the possibility of parole and 50 years to life.

Bridgeforth appealed his conviction in this court, and on October 29, 2015, we affirmed the conviction and sentence with directions to strike a parole revocation fine. The California Supreme Court denied review in the case on January 13, 2016.

On June 6, 2016, Bridgeforth filed a postconviction discovery petition pursuant to section 1054.9, requesting the trial court to order production of discovery materials from trial counsel as referenced in exhibits admitted at trial, including CD's, DVD's, copies of specific minute orders, transcripts of particular court proceedings, copies of subpoenaed records, the murder book, and pre-preliminary hearing discovery, transcripts and minute orders. The trial court denied the motion on June 20, 2016, on the ground that petitioner "failed to establish good cause for the disclosure of the items requested."

Bridgeforth filed a timely notice of appeal on July 8, 2016. Appointed counsel filed an opening brief raising no issues and asking this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Bridgeforth filed his own supplemental brief, in propria persona. On March 17, 2017, we ordered supplemental briefing on the following issue: "Whether the trial court properly denied appellant's request for post-conviction discovery pursuant to Penal Code section 1054.9 on the ground that appellant had 'failed to establish good cause for the disclosure of the items requested.'" (Gov. Code, § 68081.)

DISCUSSION

I. The appeal from the denial of the section 1054.9 petition may be treated as a petition for writ of mandate

The Attorney General maintains that the appeal from the order denying the petition for postconviction discovery should be dismissed because the trial court's order is reviewable only by way of a petition for writ of mandate. (See *In re Steele* (2004) 32 Cal.4th 682, 692.) Although we could dismiss the appeal, in the interests of justice and judicial economy we will instead treat the appeal as an application for writ of mandate and dispose of it on its merits. (*People v. Payne* (1988) 202 Cal.App.3d 933, 937; see also *People v. Picklesimer* (2010) 48 Cal.4th 330, 335 ["A court may in its discretion treat such a postjudgment motion as a mislabeled petition for writ of mandate"].)

II. The trial court abused its discretion in denying the petition for postconviction discovery

A. Bridgeforth's efforts to obtain discovery from appellate and trial counsel

Beginning in January 2016, Bridgeforth exchanged numerous letters with his trial attorney (Greg Lesser) and his appellate counsel (John Dwyer), seeking material from their files, trial exhibits, and other documents to aid in the preparation of a habeas corpus petition based on ineffective assistance of counsel. Dwyer sent Bridgeforth his trial transcripts, but advised him that all of the material from the trial, including the CD's and DVD's Bridgeforth had requested, was in the possession of trial counsel Lesser.

By letter dated February 8, 2016, Bridgeforth asked Lesser to send the CD's and DVD's from his case to him in prison, or, if

he could not receive them in prison, to his mother. Lesser responded on March 2, 2016, advising Bridgeforth he had ordered the file from the Public Defender's Office archives, which would "take a little bit of time." Lesser agreed to have the CD's and DVD's copied once he received the file, but stated he would send the copies to Bridgeforth's mother because he did not believe he was permitted to send them to Bridgeforth in prison.

In a letter dated February 27, 2016, to Dwyer, Bridgeforth noted numerous omissions from the records Dwyer had sent and listed additional material he wanted from Dwyer. In an undated letter to Lesser, Bridgeforth requested the same material he had sought from Dwyer along with several additional items. Lesser responded on March 21, 2016, noting "you are requesting essentially your entire file." Lesser explained, "I will begin processing your request. You must understand that this will take a great amount of time. Once your file is retrieved, it will have to be copied, then each page will have to be checked to see if any redactions are needed which are mandated by law, those redactions will have to be made, and then the file will be sent to you."

It is not clear from the record whether Bridgeforth has ever received his reconstructed trial file or other documents he has requested from trial counsel, or whether the CD's and DVD's were sent to his mother.

B. The trial court applied the wrong standard in denying the petition

Section 1054.9 provides in relevant part:

"(a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that *good faith efforts*

to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b).

“(b) For purposes of this section, ‘discovery materials’ means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

“(c) In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is *good cause to believe that access to physical evidence is reasonably necessary* to the defendant’s effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and nothing in this section shall provide an alternative means of access to physical evidence for those purposes.” (§ 1054.9, subds. (a)–(c), italics added.)

According to the plain language of the statute, a defendant’s initial burden on a petition for postconviction discovery is to show “that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful.” (§ 1054.9, subd. (a).) Here, the numerous letters attached to Bridgeforth’s 1054.9 petition amply demonstrate his good faith efforts in this regard. Writing to appellate counsel, Bridgeforth explained that he intended to file a state habeas petition and needed the requested materials to support the ineffective assistance of counsel claim he expected to raise in the petition. In letters to both appellate and trial counsel, he requested the CD’s

and DVD's and provided a list of the specific material he was seeking in order to pursue his habeas petition.

Respondent contends that Bridgeforth "failed to demonstrate to the superior court that his good faith efforts to obtain the materials from the trial court were unsuccessful." The assertion is incorrect. The superior court made no finding that Bridgeforth had failed to establish his efforts to obtain the discovery had been unsuccessful, denying the petition instead for Bridgeforth's failure to show "good cause." In the absence of any finding to the contrary, the fact that Bridgeforth filed the petition for the discovery five months after he began requesting the CD's and DVD's, and nearly three months after making a detailed request for other materials constitutes a prima facie showing that his good faith efforts had been unsuccessful and he had not received the materials to which he was entitled.

With respect to the "discovery materials" described in subdivision (b), our Supreme Court has explained that "section 1054.9 requires defendants who seek discovery beyond file reconstruction to show a reasonable basis to believe that other specific materials actually exist." (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 899.) Here, to the extent Bridgeforth sought discovery of material that would not be part of his reconstructed trial file, his letters to counsel and his petition contained detailed information establishing a high probability that the requested documents exist. He therefore met his burden in this regard as well as meeting the good faith requirement of subdivision (a).

We review a trial court's rulings on discovery matters for abuse of discretion. (*People v. Thompson* (2016) 1 Cal.5th 1043, 1105.) " "A trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand." ' ' (*Zurich*

American Ins. Co. v. Superior Court (2007) 155 Cal.App.4th 1485, 1493–1494; *People v. Kelly* (2010) 189 Cal.App.4th 73, 77.)

Section 1054.9 unambiguously provides that, once the defendant meets the burden of establishing his or her good faith but unsuccessful efforts to obtain the requested discovery, “the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b).” The statute thus requires the superior court to make three determinations: (1) Whether the defendant made a good faith effort to obtain the discovery before seeking the court’s assistance; (2) whether the defendant was unsuccessful in obtaining the requested discovery; and, (3) if the requested discovery goes beyond file reconstruction, whether the defendant established a reasonable likelihood that the materials actually exist. (§ 1054.9, subd. (b); *Barnett v. Superior Court*, *supra*, 50 Cal.4th at p. 899.)

In ruling on Bridgeforth’s petition, the superior court made none of the determinations it was required to make under section 1054.9, subdivisions (a) and (b), instead relying on the good cause requirement in subdivision (c) to deny discovery. However, subdivision (c) of section 1054.9 applies only where the defendant seeks access to *physical evidence*, requiring the defendant to show “good cause to believe that access to physical evidence is reasonably necessary to the defendant’s effort to obtain relief.” (§ 1054.9, subd. (c).) Here, because none of Bridgeforth’s discovery requests sought access to physical evidence from his trial, the good cause requirement of subdivision (c) was inapplicable to the court’s consideration of the petition.

We therefore conclude the superior court abused its discretion by applying the incorrect legal standard to deny the petition for postconviction discovery. The matter is remanded for

the court to make appropriate findings under section 1054.9, subdivision (a), including whether Bridgeforth has received all the trial file materials to which he is entitled, and how best to provide reasonable access to any materials such as the CD's and DVD's which trial counsel may have withheld. In addition, the superior court should evaluate whether any of the requested materials in the possession of the district attorney were not provided to Bridgeforth at the time of trial and should be provided to him now in accordance with section 1054.9, subdivision (b).

DISPOSITION

Bridgeforth's purported appeal is treated as a petition for writ of mandate. The petition for writ of mandate is granted. Let a peremptory writ of mandate issue, directing the trial court to vacate its June 20, 2016 order denying the petition for post-conviction discovery pursuant to Penal Code section 1054.9, and to reconsider that petition in light of the views expressed herein.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.