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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANKLIN LARANCE
FORCH,

Defendant and Appellant.

B296637

(Los Angeles County
Super. Ct. No. MA030634)

APPEAL from an order of the Superior Court of Los Angeles County. Kathleen Blanchard, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, Idan Ivri and Nancy Lii Ladner, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant and appellant Franklin Larance Forch appeals from the denial of his petition for resentencing pursuant to Penal Code section 1170.95. We affirm.

Defendant was charged with multiple felonies, including the murder of Milton Tutt (count 1). In 2009, pursuant to a negotiated plea agreement, defendant pled no contest to the murder and admitted a prior qualifying strike conviction, a felony enhancement (Pen. Code, § 667, subd. (a)(1)), and four prison priors (§ 667.5, subd. (b)). The court accepted defendant's plea and waivers on the record and counsel stipulated to a factual basis for the plea. The remaining counts were dismissed. Defendant was sentenced to state prison for a term of 23 years to life and awarded 1,853 days presentence custody credits. This court affirmed defendant's conviction in an unpublished opinion filed on February 7, 2011 (case No. B221505).

On January 7, 2019, defendant filed a petition in propria persona requesting resentencing pursuant to Penal Code section 1170.95. The petition requested the appointment of counsel.

The trial court denied the petition. In the court's written denial order, the court explained: "[T]he court takes judicial notice of the trial court records in this case, including the Probation Report, which details the underlying facts of the case. The record reveals the defendant entered a plea to second degree murder. However, the People never pursued either a felony-murder theory or a natural and probable consequence theory of murder. Here, the defendant chased his mother and stepfather down with a knife, then proceeded to attack them both. His stepfather later died as a result[.] . . . [T]he theory of liability for murder was that the defendant was the actual killer, who acted

with malice aforethought. [¶] Because the case involved neither a felony-murder theory, nor natural and probable consequences theory, the defendant has failed to make a prima facie case for relief.”

Defendant contends the trial court erred in summarily denying the petition without first appointing him counsel who could have assisted him in briefing the issues and explaining why relief is warranted. Defendant argues the court’s summary denial is at odds with the statutory language.

We disagree. “When we interpret statutes, giving effect to legislative purpose is the touchstone of our mission.” (*People v. Valencia* (2017) 3 Cal.5th 347, 409.) “The text of the statute is integral to our understanding of the statute’s purpose.” (*Ibid.*) “We must take ‘the language . . . as it was passed into law, and [we] must, if possible without doing violence to the language and spirit of the law, interpret it so as to harmonize and give effect to all its provisions.’ ” (*Id.* at pp. 409-410.)

Penal Code section 1170.95 was enacted as part of the legislative changes effected by Senate Bill 1437. “Senate Bill 1437 was enacted to ‘amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, 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.’ (Stats. 2018, ch. 1015, § 1, subd. (f).)” (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.)

Penal Code section 1170.95, subdivision (a) provides, in plain language, that *only* persons “convicted of felony murder or murder under a natural and probable consequences theory” may

file a petition seeking resentencing. Subdivision (c) provides the court “shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section.”

The statute contemplates an initial eligibility determination by the court. Allegations stated in a resentencing petition may be erroneous. Where, as here, there is no reasonable factual dispute that the defendant is not eligible for relief, it would be a waste of judicial resources to automatically require the appointment of counsel and briefing on essentially a moot point. The court, after taking judicial notice of the record which showed defendant was charged and convicted as *the actual killer*, was well within its rights and acting in harmony with the statutory scheme by issuing a summary denial of the petition.

Any denial of a state statutory right to counsel is subject to harmless error analysis. (*People v. Epps* (2001) 25 Cal.4th 19, 28-29 [denial of right that is “purely a creature of state statutory law” is subject to standard for state law errors set forth in *People v. Watson* (1956) 46 Cal.2d 818, 836].) If there were error, it was harmless by any standard.

DISPOSITION

The order denying the petition for resentencing is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.