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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE L. ROBLES,

Defendant and Appellant.

B272499

(Los Angeles County
Super. Ct. No. A390729)

APPEAL from an order of the Superior Court of
Los Angeles County, John J. Lonergan, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On May 13, 1983, when Jose L. Robles was 17 years old, he was arrested for murder and attempted murder. (Pen. Code, §§ 187, 664/187.)¹ On November 1, 1984, Robles was sentenced for first degree murder, attempted murder, and an arming enhancement to a term of 25 years to life. On June 8, 2015, Robles filed in the superior court a Petition for Recall of Sentence, arguing that he was entitled to relief under Senate Bills 9 and 260, legislation drafted in response to a line of cases from the United States Supreme Court (primarily *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455] (*Miller*)), which established that the cruel and unusual punishment clause of the Eighth Amendment must be given special consideration when the case involves a juvenile who has committed an offense leading to a life sentence.

On April 6, 2016, the superior court ruled that Robles did not qualify for resentencing under Senate Bill 9's section 1170, subdivision (d)(2)(A)(i), but that he was eligible to receive a youth offender parole hearing under Senate Bill 260's section 3051 and, therefore, "referred [Robles] to [the] parole board to seek such [a] hearing. All proceedings in the above may be expedited due to the defendant spending the last 6 months seeking relief from this court." Robles filed a timely notice of appeal from this ruling.

We appointed counsel to represent Robles on appeal. After reviewing the record, counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441. We directed counsel to send the record on appeal and a copy of the opening brief to Robles, who filed a supplemental brief.

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

We are satisfied that appellate counsel has fully complied with her responsibilities and that no arguable appellate issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278 [120 S.Ct. 746]; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

The California Legislature's response to *Miller* is contained in at least two very different statutory schemes. Section 1170, subdivision (d)(2)(A)(i), provides: "When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing." The superior court properly held that Robles is not entitled to resentencing under this statute because he was not given a term of life without possibility of parole. Indeed, he was not even given the functional equivalent of a life-without-possibility-of-parole term because he has been before the Parole Board four times so far (in 1999, 2005, 2008, and 2010) although he has been denied parole each time.

The superior court also properly held, in Robles's favor, that he was entitled to a youth offender parole hearing under the statutes enacted to apply to juveniles who have been given any kind of indeterminate life sentence. Section 3051 provides, in pertinent part: "A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 23 years of age at the time of his or her controlling offense." (§ 3051, subd. (a)(1).) "A person who was convicted of a controlling offense that was committed before the person had attained 23 years of age and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or

her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.” (§ 3051, subd. (b)(3).) “When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, prior to attaining 23 years of age, the board, in reviewing a prisoner’s suitability for parole pursuant to Section 3041.5 [general rules governing parole suitability hearings], shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.” (§ 4801, subd. (c).)

The superior court also “referred [Robles] to [the] parole board to seek such hearing” and ordered that “[a]ll proceedings in the above may be expedited due to the defendant spending the last 6 months seeking relief from this court.” In light of the legislative scheme enacted in reaction to the *Miller* line of cases, it appears the superior court’s ruling was entirely proper.

DISPOSITION

The superior court's order is affirmed.

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EDMON, P. J.

We concur:

ALDRICH, J.

GOSWAMI, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.