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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.

NOAESE FALANIKO,

Defendant and Appellant.

B281713

(Los Angeles County
Super. Ct. No. BA414815)

APPEAL from an order of the Superior Court of Los Angeles County. Jessie I. Rodriguez, Judge. Affirmed.

Noaese Falaniko, in pro. per.; and Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Noaese Falaniko appeals from the order entered by the superior court following the remand for retrial of four counts of attempted murder (Pen. Code,¹ §§ 664/187, subd. (a); counts 2, 3, 6, & 7). At a trial setting conference on February 7, 2017, the prosecutor declined to retry any of the reversed counts, and the trial court dismissed the charges in the interests of justice. The superior court ordered the sentences on the counts of conviction that had been affirmed on appeal (counts 1, 4, 5, 8, 9, & 10) to remain as previously imposed for an aggregate indeterminate sentence of 170 years to life.

Appellant appealed the judgment of conviction and sentence “entered on February 7, 2017.” We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record in accordance with the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436. Appellant filed his own supplemental brief, in propria persona.

In appellant’s supplemental brief he argues that his convictions on counts 1, 4, 5, 8, 9, and 10 must now be reversed because the same evidence that was too weak to support retrial on counts 2, 3, 6, and 7 is insufficient to sustain the convictions on the remaining counts. Specifically, appellant contends his confession “is not strong enough” to sustain any of the convictions, appellant did not match the description of the suspect in the police report, and none of the victims identified appellant as the perpetrator at trial.

¹ Undesignated statutory references are to the Penal Code.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

PROCEDURAL BACKGROUND

In his first appeal, appellant challenged his convictions arising out of three separate shooting incidents for one count of first degree murder (§ 187, subd. (a)—count 1), seven counts of attempted murder (§§ 664/187, subd. (a)—counts 2, 3, 4, 6, 7, 9, 10), and one count each of shooting at an occupied motor vehicle and at an inhabited dwelling (§ 246—counts 5 & 8). In an opinion filed July 29, 2016, we affirmed appellant's convictions for murder in count 1, attempted murder in counts 4, 9 and 10, and shooting at an occupied motor vehicle and at an inhabited dwelling in counts 5 and 8. (*People v. Falaniko* (2016) 1 Cal.App.5th 1234, 1238.) We reversed and remanded for retrial appellant's attempted murder convictions in counts 2, 3, 6, and 7 on the basis of instructional error. (*Id.* at p. 1251.)

At a trial setting conference on February 7, 2017, the district attorney advised the superior court that the People had elected not to retry appellant on the reversed counts, given that the aggregate sentence on the remaining counts of conviction was 170 years to life. The court dismissed counts 2, 3, 6, and 7, and ordered the modification of the abstract of judgment to reflect an aggregate sentence of 170 years to life on the remaining counts.

DISCUSSION

Appellant has already unsuccessfully appealed his convictions for first degree murder in count 1 (§ 187, subd. (a)), the three remaining convictions for attempted murder in counts 4, 9, and 10 (§§ 664/187, subd. (a)), and his convictions for

shooting at an occupied motor vehicle and at an inhabited dwelling in counts 5 and 8 (§ 246). (*Falaniko, supra*, 1 Cal.App.5th at pp. 1238, 1251.) Based on our examination of the entire record in this appeal, we reject appellant's claim that the dismissal of counts 2, 3, 6, and 7 permits, much less requires, a reexamination of the evidentiary support for his remaining counts of conviction. We also find no abuse of discretion in the superior court's imposition of the original sentences on counts 1, 4, 5, 8, 9, and 10, for an aggregate indeterminate term of 170 years to life in state prison.

We are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly, supra*, 40 Cal.4th at pp. 109–110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The order is affirmed.

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LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.