Filed 9/24/18 P. v. Wilson CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JAMES FLOYD WILSON, Defendant and Appellant.	B289638 (Los Angeles County Super. Ct. No. GA064251)

THE COURT:

James Floyd Wilson appealed the superior court's ruling denying his motion for resentencing and request to strike or dismiss the gun enhancement imposed pursuant to Penal Code section 12022.5.[1] We appointed counsel to represent Wilson on appeal. After examination of the record, counsel filed an opening

[1] Undesignated statutory references are to the Penal Code.

brief raising no issues and asking this court to independently review the record. Wilson filed his own supplemental brief, in propria persona.

BACKGROUND

In an information filed June 27, 2007, Wilson was charged with murder (§ 187, subd. (a), count 1) and carjacking (§ 215, subd. (a), count 20).[2] On May 30, 2014, on motion of the People, the trial court ordered the information amended to change the charge in count 1 from murder (§ 187, subd. (a)) to manslaughter (§ 192, subd. (a)). Wilson then waived his constitutional rights and entered guilty pleas to count 1 (manslaughter, § 192, subd. (a)) and count 20 (carjacking, § 215, subd. (a)). Wilson also

---

[2] The information also charged the following felony violations:

Counts 2 and 19: section 182, subdivision (a), criminal conspiracy;

Count 21: section 245, subdivision (a)(2), assault with a firearm;

Count 23: section 451, subdivision (d), arson of property;

Count 25: section 653f, subdivision (b), solicitation of murder;

Counts 26 and 32: section 289, subdivision (a)(1), sexual penetration by means of force, violence, duress, menace, or fear;

Counts 27, 30, and 33: section 288a, subdivision (c)(2), oral copulation by means of force, violence, duress, menace, or fear;

Counts 28 and 29: section 243.4, subdivisions (a) and (d), sexual battery;

Counts 31 and 34: section 286, subdivision (c)(2), sodomy by means of force, violence, duress, menace, or fear.

admitted the gun enhancement alleged with respect to count 1 pursuant to section 12022.5, subdivision (a), as well as the strike prior allegations (§§ 1170.12, subds. (a)–(d), 667, subds. (b)–(i)) and the prior prison term allegations (§ 667, subd. (a)(1).)

Wilson was sentenced on August 15, 2014. The trial court imposed an aggregate term of 45 years, 4 months in state prison, consisting of the high term of 11 years on count 1, doubled in accordance with the Three Strikes law, plus 10 years for the gun enhancement pursuant to section 12022.5, subdivision (a). In addition, the court imposed a consecutive term of three years, four months (one-third the mid-term, doubled) as to count 20, plus a 10-year enhancement for two prior prison terms (§ 667, subd. (a)(1)). In accordance with the plea agreement, all of the remaining charges were dismissed.

On February 20, 2018, appellant filed a motion in pro. per. for resentencing, in which he requested that the superior court exercise its discretion under Senate Bill No. 620 ("SB 620") to strike or dismiss the firearm enhancement imposed under section 12022.5. (§ 12022.5, subd. (c).) The superior court denied the motion on March 8, 2018, ruling as follows:

"SB 620, effective January 1, 2018, amended sections 12022.5 and 12022.53. Those sections create various sentence enhancements for defendants who use firearms during the commission of a felony or attempted felony. Prior to the passage of SB 620, imposition of the enhancements were mandatory; trial courts were prohibited from striking or dismissing allegations under these sections. (Former section 12022.5, subd. (c), section 12022.53, subd. (h).) SB 620 removed that prohibition, and granted trial courts express authority to strike or dismiss applicable firearm enhancements at the time of sentencing or

resentencing (1) if the defendant's case is not yet final and the case is later remanded to the trial court or (2) for final cases, if the defendant is entitled to resentencing pursuant to some other law."

"SB 620 does not provide petitioner with a basis for relief. . . .[3] [P]etitioner's case is final. Petitioner is not entitled to relief pursuant to SB 620 because the amended sections do not create an independent right to resentencing for final cases. SB 620 provides that the court's newfound discretion 'applies to any resentencing that may occur pursuant to any other law.' (Stats. 2017, ch. 682, sections 1-2.) Because petitioner has not shown that he is entitled to resentencing under some law other than SB 620, he is not entitled to relief under SB 620."

DISCUSSION

In his supplemental brief Wilson argues that because SB 620 applies retroactively, his case should be remanded to the superior court for resentencing in accordance with section 12022.5, subdivision (c). However, as the superior court found, Wilson is not entitled to relief under section 12022.5,

---

[3] At this point in its ruling, the court stated, "The Court of Appeal affirmed petitioner's conviction in full on December 6, 2001 (Case No. B140769), the California Supreme Court denied review on March 13, 2002 (Case No. S103702), and the time to petition for certiorari expired on June 11, 2002." However, neither of these cases has anything to do with Wilson: the charges in the instant case were not filed until 2007, and he was not sentenced until 2014. Further, Wilson's name does not appear in these cases: the case name listed in the court dockets under B140769/S103702 is *People v. Day*.

subdivision (c) because his case is final and he does not qualify for resentencing pursuant to any other law. His petition for resentencing under SB 620 was therefore properly denied.

In the absence of evidence to the contrary, the presumption of retroactive application of a statutory amendment reducing criminal punishment attaches to amendments that give the trial court discretion to impose a lesser penalty as well as to amendments reducing a criminal penalty. (*People v. Francis* (1969) 71 Cal.2d 66, 76 (*Francis*); *In re Estrada* (1965) 63 Cal.2d 740, 747–748 (*Estrada*); *People v. Robbins* (2018) 19 Cal.App.5th 660, 678.) As our Supreme Court has explained, " 'When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final.' " (*People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 307 (*Lara*), quoting *Estrada*, at p. 745.)

Wilson's argument for retroactivity in this case ignores the fact that the retroactive application of SB 620 is only available to persons whose *judgments are not yet final*. (*Estrada*, *supra*, 63 Cal.2d at p. 745; *Francis*, *supra*, 71 Cal.2d at p. 75; *People v. Chavez* (2018) 22 Cal.App.5th 663, 712.) But here, as the

superior court found, Wilson's case *is* final, and he has made no showing to the contrary.[4] Wilson entered his plea on May 30, 2014, and he was sentenced on August 15, 2014. He did not appeal his conviction or the sentence, and the time within which to do so lapsed 60 days after the entry of judgment. (Cal. Rules of Court, rule 8.308.) By the time Wilson filed his motion for resentencing on February 20, 2018, his case was unquestionably final. (*People v. Smith* (2015) 234 Cal.App.4th 1460, 1465 ["A judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari have expired"]; *People v. Kemp* (1974) 10 Cal.3d 611, 614.) Accordingly, Wilson is not entitled to the retroactive application of section 12022.5, subdivision (c).

The superior court also correctly ruled that Wilson is not entitled to relief under SB 620 because the amendment to section 12022.5 does "not create an independent right to resentencing for final cases." The authority provided by subdivision (c) of section 12022.5 broadly "applies to any resentencing that may occur pursuant to any other law." This means that, "[b]y its express terms, this provision extends the benefits of SB 620 to defendants who have exhausted their rights to appeal and for whom a judgment of conviction has been entered *but who have obtained collateral relief by way of a state or federal habeas corpus proceeding*." (*People v. Arredondo* (2018) 21 Cal.App.5th 493, 507, emphasis added.) It does not mean, as Wilson seems to argue, that a defendant whose case is final, who has not obtained

---

[4] Although the superior court described the wrong case in explaining why Wilson's case is final, its conclusion was nevertheless correct.

habeas relief, and who is not otherwise entitled to resentencing under some other law has any right to resentencing under section 12022.5, subdivision (c).

* * *

We have examined the entire record and are satisfied that defendant'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.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

LUI, P.J. ASHMANN-GERST, J. HOFFSTADT, J.