

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ANTHONY COWIE,

Defendant and Appellant.

B296955

(Los Angeles County
Super. Ct. No. TA091960)

THE COURT:

Defendant and appellant Daniel Anthony Cowie (defendant) appeals the denial of his petition filed pursuant to Penal Code section 1170.126.¹ His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On July 29, 2019, we notified defendant of his counsel's brief and gave him leave to file his own brief or letter

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

stating any grounds or argument he might wish to have considered, and defendant has submitted a supplemental brief. We have reviewed defendant's brief and the entire record, and find no arguable issues. We thus affirm the trial court's order.

In 2009, defendant was convicted of two counts of second degree murder, with true findings on special allegations of firearm use by a principal and commission of the crimes in association with a criminal street gang. Defendant was sentenced to two concurrent terms of 40 years to life in prison. In 2018, Senate Bill No. 1437 (S.B. 1437) was passed in order 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).) S.B. 1437 also added section 1170.95, which created the procedure whereby a person whose felony murder conviction was final, but who could not have been convicted under the amended statutes, could petition to have the conviction vacated. (§ 1170.95, subd. (a).)

S.B. 1437 was effective January 1, 2019. (See Stats. 2018, ch. 1015, § 4.) A short time later, defendant filed his petition for writ of habeas corpus and for relief under section 1170.95. The trial court summarily denied the petition upon finding that defendant had not been convicted of felony murder or under a theory of natural and probable consequences, and that the jury was not instructed in those theories. The court thus concluded that defendant was ineligible for relief under section 1170.95. In his supplemental brief, defendant contends that the statute

applies to him because he was convicted of second degree felony murder. Defendant argues that he was not the actual killer, that there was evidence that the actual killer intended only to “beat the crap” out of a rival gang member, and he claims that there was no (direct) evidence that he knew of the presence of a gun.

Upon request of counsel we have taken judicial notice of the appellate record in the underlying case of *People v. Cowie*, No. B222597, and have reviewed that record, including the trial testimony, jury instructions, and arguments of counsel. We have also reviewed defendant’s section 1170.95 petition, attached exhibits, and defendant’s supporting declaration. The record demonstrates that defendant was convicted as a direct aider and abettor, that he was not convicted of felony murder, and that the jury was not instructed that it could find defendant guilty of murder without regard to malice. (See generally, *People v. Bryant* (2013) 56 Cal.4th 959, 964-966.) Nor was the doctrine of natural and probable consequences advanced as a theory in this case.

Defendant requests leave to file a petition for writ of habeas corpus in this proceeding in order to raise issues unrelated to the trial court’s denial of his section 1170.95 petition, including ineffectiveness of trial counsel. To the extent defendant attempts to raise facts and circumstances not raised below and not at issue in this proceeding, he should file a separate petition for habeas relief. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

We are satisfied that defendant’s appellate counsel has fully complied with his responsibilities and that no arguable issue exists. We conclude that defendant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of

the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The order denying defendant's section 1170.95 petition is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

LUI, P. J.

ASHMANN-GERST, J.

CHAVEZ, J.