

Filed 12/10/19 P. v. Cole CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TOMMY COLE,

Defendant and Appellant.

B299427

(Los Angeles County
Super. Ct. No. BA354746)

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

Jeralyn Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 2009, Tommy Cole shot and killed Antwine Brown in a nightclub parking lot. He was charged with murder, and it was alleged that he personally used a handgun in commission of the murder (Pen. Code, §§ 187, subd. (a), 12022.53, subds. (b), (c) & (d)). He was convicted and the firearm allegations were found to be true, but we overturned his conviction on the ground that a police detective was improperly permitted to testify Cole had made incriminating statements while in custody. (*People v. Cole*, Feb. 16, 2012, B228436 [nonpub. opn.]) Cole was then retried twice, each time resulting in a mistrial. At the fourth trial, a jury found Cole guilty of second degree murder and found true the allegation that he personally and intentionally discharged a firearm, resulting in Cole’s death. He was sentenced to a term of 40 years to life in prison. We affirmed the conviction on appeal. (*People v. Cole*, Oct. 7, 2015, B251500 [nonpub. opn.])

In January 2019, Cole petitioned the superior court for resentencing under Penal Code section 1170.95, which permits a “person convicted of felony murder or murder under a natural and probable consequences theory [to] file a petition with the court that sentenced the petitioner to have the petitioner’s murder conviction vacated and to be resentenced on any remaining counts when [specified] conditions apply.” (Pen. Code, § 1170.95, subd. (a).) Cole argued he was convicted of felony murder or murder under a natural and probable consequences theory.

The court denied the petition on the ground that Cole was convicted under neither of these theories, as he was the only perpetrator, no other crime was committed at the same time, and the jury found he was the shooter.

Cole appealed the order denying his petition.

We appointed counsel to represent Cole on appeal. After examination of the record, appointed counsel filed an opening brief raising no issues and asking this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436, 441-442.) On October 30, 2019, we sent letters to Cole and appointed counsel, directing counsel to immediately forward the appellate record to Cole and advising him that within 30 days he could personally submit any contentions or issues that he wished us to consider. He has not responded. We have examined the entire record and find no arguable issue exists, and are therefore satisfied Cole's attorney complied with her responsibilities. (*Id.* at p. 441.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

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