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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEX VINCENT BRACAMONTE,

Defendant and Appellant.

B299419

(Los Angeles County  
Super. Ct. No. VA106046)

APPEAL from an order of the Superior Court of Los Angeles County, Joseph R. Porras, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \* \* \*

In 2011, this Division affirmed defendant Alex Vincent Bracamonte's conviction for first degree murder (Pen. Code, § 187, subd. (a)) and personal use of a knife (§ 12022, subd. (b)(1)), based on the jury's finding that defendant stabbed and killed the victim with malice, premeditation, and deliberation. (*People v. Bracamonte* (Sept. 15, 2011, B223374) [nonpub. opn.] )

On March 19, 2019, defendant, in propria persona, filed a petition seeking reduction of his sentence under Senate Bill No. 1437 (2017-2018 Reg. Sess.), arguing he was eligible for resentencing under the "new 'Felony Murder Rule.' "

The People opposed the motion, arguing defendant failed to make a prima facie showing for relief, as he was convicted of first degree murder as a principal, and was ineligible for resentencing under Senate Bill No. 1437 as a matter of law.

Defendant, represented by counsel, filed a reply arguing "the filing of a petition, in and of itself, requires that an Order to Show Cause be issued."

At the hearing on the petition, defendant conceded there was no dispute he was the actual killer. The trial court denied the petition, and this timely appeal followed.

We appointed appellate counsel to represent defendant. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. Defendant filed a supplemental brief with this court, restating the arguments made in his petition, and arguing Senate Bill No. 1437 is constitutional.

Penal Code section 1170.95, which was added by Senate Bill No. 1437 (Stats. 2018, ch. 15, § 4) provides: "A person convicted of felony murder or murder under a natural and

probable consequences theory may 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. . . ." (§ 1170.95, subd. (a); *People v. Martinez* (2019) 31 Cal.App.5th 719, 722.) The petition must make "a prima facie showing that the petitioner falls within the provisions of this section." (§ 1170.95, subd. (c); *People v. Ramirez* (2019) 41 Cal.App.5th 923, 929-930.)

Here, it is undisputed that defendant was not tried or convicted under felony murder or a natural and probable consequences theory, and therefore is ineligible for relief.

We have examined the entire record, consisting of one volume of clerk's transcript and one volume of reporter's transcript, and are satisfied that appointed counsel fully complied with her responsibilities and that no arguable appellate issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

#### **DISPOSITION**

The order is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.