

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMUEL B. WILLIAMS,

Defendant and Appellant.

B283001

(Los Angeles County
Super. Ct. No. KA046397)

APPEAL from an order of the Superior Court of Los Angeles County. Steven D. Blades, Judge. Affirmed.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Samuel B. Williams appeals from an April 25, 2017 order summarily denying his nonstatutory motion to vacate or modify his sentence of 25 years to life, originally imposed in 2000 upon his conviction, in a court trial, of first degree murder with the personal use of a firearm. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude no arguable issues exist. Accordingly, we affirm.

PROCEDURAL AND FACTUAL HISTORY

On January 31, 1994, appellant shot and killed Tom Granados. Gary Holmes, who had brokered appellant's purchase of two kilograms of cocaine from Granados, witnessed the shooting. On March 23, 1994, Holmes testified at appellant's first preliminary hearing that appellant shot Granados.

A December 1, 1999 amended information charged appellant with murder in the commission of robbery (Pen. Code, § 190.2, subd. (a)(17))¹ with the personal use of a firearm (§ 12022.5, subd. (a)); 16 prior convictions within the meaning of the Three Strikes law; one prior conviction within the meaning of section 667, subdivision (a); and one prior prison term within the meaning of section 667.5, subdivision (b).

Another preliminary hearing was conducted on December 13, 1999.² Holmes testified at the 1999 preliminary hearing that he could not remember the incident, but repeatedly

¹ Unless otherwise noted, further statutory references are to the Penal Code.

² The record before us on this appeal shows that the case was dismissed because the People were unable to find Holmes. The case was refiled in 1999.

admitted as truthful his prior identification to investigators of appellant as the shooter and his prior testimony at the first preliminary hearing. When defense counsel objected to the introduction of Holmes's preliminary hearing testimony, the magistrate overruled the objection upon finding that Holmes's inability to remember the shooting was feigned.

Before trial, the People offered appellant three possible dispositions: (1) plead guilty to second degree murder and be sentenced to 15 years to life in state prison; (2) waive jury and have a court trial with all enhancements and prior convictions stricken and face a maximum sentence of 25 years to life for first degree murder; or, (3) go to jury trial and face life without the possibility of parole plus numerous additional years. At first, appellant chose to proceed by jury, but subsequently agreed to a court trial.

At the court trial, the prosecution established the facts relating to the murder by using Holmes's 1994 preliminary hearing testimony. When defense counsel objected, the trial court noted the 1994 preliminary hearing testimony was admissible under the prior inconsistent statement exception to the hearsay rule pursuant to Evidence Code section 1235.

In 2000, the trial court found appellant guilty of first degree murder and imposed a sentence of 25 years to life.

Appellant timely appealed. In that earlier appeal, No. B145295, appointed counsel filed a *Wende* brief, and appellant filed a supplemental brief. Among other issues raised, appellant contended that Holmes's preliminary hearing testimony should not have been admitted at trial. We rejected that contention, explaining that Holmes's preliminary hearing testimony was admissible as a prior inconsistent statement based

on the trial court's implicit finding that Holmes's failure of memory was contrived. (*People v. Green* (1971) 3 Cal.3d 981, 988-989.) We affirmed the judgment in our opinion filed on May 31, 2001. (*People v. Williams* (May 31, 2001, B145295) [nonpub. opn.])

More than a decade passed. On April 7, 2017, appellant filed a motion "To Vacate/Modify Illegal Unlawful Unauthorized Sentence," seeking to vacate his murder conviction. He contended, as he had in his supplemental brief in his earlier appeal, that the trial court erred in considering Holmes's preliminary hearing testimony.

On April 25, 2017, the court denied the motion on procedural grounds that appellant had failed to explain and justify the significant delay in seeking relief and had raised issues which were raised and rejected on appeal.³

Appellant timely appealed. (§ 1237, subd. (b).)

DISCUSSION

After review of the record, appellant's court-appointed appellate counsel filed an opening brief, asking this court to review the record independently pursuant to *Wende, supra*, 25 Cal.3d 436.

In his supplemental brief, appellant contends, as he did in his first appeal, case No. B145295, that Holmes's testimony at the 1994 preliminary hearing should not have been admitted at trial. We addressed this issue in appeal No. B145295 and concluded that, as a matter of law, that contention had no merit. Because our legal conclusion established law of the case (*People v.*

³ The court incorrectly stated that the conviction resulted from a plea. It did not.

Boyer (2006) 38 Cal.4th 412, 442), we do not address that same contention again.

Appellant further contends that the court erred in denying his 2017 motion for his failure to justify the significant delay, because appellant raised an issue of constitutional dimension that “contaminated the entire judicial process.” He did not. Instead, he raised an issue that we already decided and that – as already noted – constitutes law of the case.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant 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, 112-113.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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