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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT JEROME BECKLEY, JR.,

Defendant and Appellant.

B298658

(Los Angeles County
Super. Ct. No. TA094886)

APPEAL from an order of the Superior Court of Los Angeles County, Allen Joseph Webster, Jr., Judge. Affirmed.

Robert Bacon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 2008, defendant and appellant Albert J. Beckley, Jr. and a fellow gang member were charged with one count of first degree premeditated murder and two counts of attempted premeditated murder. Criminal street gang enhancements (Pen. Code, § 186.22, subd. (b)(1)(C))¹ and personal use firearm enhancements (§ 12022.53, subds. (b)–(e)) were also alleged against Beckley. The evidence presented at trial² showed that in May 2007, Beckley was identified as the shooter in a fatal drive-by shooting involving rival gang members. The prosecution’s theory was that Beckley personally fired the shots, while Beckley’s counsel presented mistaken identity and alibi defenses. Neither the prosecution nor defense presented any evidence that Beckley was merely an indirect participant in the offenses. And counsel did not argue, and the jury was not instructed, on either the felony murder or the natural and probable consequences doctrine. Instead, the court instructed on first degree premeditated and deliberate murder. The jury convicted Beckley of first degree murder and found the premeditation allegation true. This court affirmed Beckley’s convictions.

In March 2019, Beckley filed a pro se petition for resentencing under section 1170.95. On page 2 of the petition form, he checked box four, which states: “I could not now be convicted of [first or second] degree murder because of changes to . . . [sections] 188 and 189,” effective January 1, 2019. The trial court summarily denied the petition on the ground that Beckley’s conviction did not

¹ Subsequent statutory references are to the Penal Code.

² The evidence at trial is summarized in this court’s prior opinion in case No. B212529. (*People v. Beckley* (2010) 185 Cal.App.4th 509, 512–514.)

fall within section 1170.95 as a matter of law because the record disclosed that Beckley was the “actual shooter” and a direct participant in the murder.

Beckley timely appealed. We appointed counsel to represent him in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). On October 29, 2019, we directed appointed counsel to immediately send the record on appeal and a copy of the opening brief to Beckley. We notified Beckley that within 30 days from the date of the notice, he could submit by letter or brief any ground of appeal, contention, or argument that he wished us to consider. We received no response.

We have independently examined the record and are satisfied that Beckley’s appellate counsel has fully complied with his responsibilities and, as we discuss below, that no arguable appellate issue exists. (*Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

Senate Bill No. 1437, which became effective January 1, 2019, was enacted 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.’” (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723 (*Martinez*), quoting Stats. 2018, ch. 1015, § 1(f), p. 6674.) Senate Bill No. 1437 added section 1170.95, which allows those “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.” (§ 1170.95, subd. (a).)

“An offender may file a petition under section 1170.95 where all three of the following conditions are met: ‘(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine[;] [¶] (2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted [of] first degree or second degree murder[;] [¶] [and] (3) The petitioner could not be convicted of first or second degree murder because of changes to Section[s] 188 or 189 made effective January 1, 2019.’ (§ 1170.95, subds. (a)(1)–(3).)” (*Martinez, supra*, 31 Cal.App.5th at p. 723.) “The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section.” (§ 1170.95, subd. (c).)

Here, the trial court had valid reasons for summarily denying Beckley’s section 1170.95 petition. Beckley is not entitled to relief under Senate Bill No. 1437 as a matter of law because the record discloses that he was tried and convicted on evidence that he was the actual shooter and a major participant in the murder and attempted murders who acted with reckless indifference to human life. Based on the record, there is no possibility that the amendments to sections 188 or 189 affect Beckley’s convictions. Consequently, the relevant statutory language does not extend the benefits of Senate Bill No. 1437 to Beckley, and the trial court properly denied his petition. No other basis for appeal appears in the record, and accordingly, we affirm.

DISPOSITION

The order is affirmed.

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ROTHSCHILD, P. J.

We concur.

JOHNSON, J.

BENDIX, J.