Filed 9/26/19 P. v. Alexander CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. STEVEN EUGENE ALEXANDER, Defendant and Appellant.	B289918 (Los Angeles County Super. Ct. No. GA036941)

APPEAL from an order of the Superior Court of Los Angeles County, Carlos E. Vazquez, Judge. Dismissed.

Renee Rich and Sally P. Brajevich, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Margaret E. Maxwell, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

Steven Eugene Alexander (defendant) appeals from an order denying his petition for a writ of error *coram nobis*. For reasons we briefly explain, we are convinced defendant has not made a prima facie showing that the denial of his *coram nobis* petition resulted in prejudicial error, and we shall therefore summarily dismiss his appeal.

For background purposes, the Attorney General moves us to take judicial notice of court records in this case, Court of Appeal case number B243170, Court of Appeal case number B243170, Court of Appeal case number B280887, and California Supreme Court case number S240989. We grant the motion. (Evid. Code, §§ 452, 459; Cal. Rules of Court, rule 8.252.)

In August 1998, defendant was charged in the Glendale Municipal Court with one count of first degree burglary in violation of Penal Code section 459.[1] He pled not guilty. In an amended complaint filed days later, defendant was charged with two counts of first degree burglary. The court thereafter held a change of plea hearing.

As recited on the record by the prosecution at that hearing, defendant accepted an offer to plead no contest "to the charge in Count 1, which is first degree residential burglary[,] for a sentence of two years state prison." Defendant's *coram nobis* petition claims this was not the offer discussed prior to the hearing, which instead required him to plead no contest to a non-strike burglary offense. He contends trial counsel "advised [him] not to worry[,] it's not a 'strike[,]' and just say yes to the questions, which [he did] with hesitation."

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[1] Undesignated statutory references that follow are to the Penal Code.

Defendant was sentenced weeks later. A minute order reflects the sentencing court "select[ed] the low term of 2 years" in "any state facility" on the first count. The reporter's transcript of the sentencing hearing was destroyed after 10 years pursuant to Government Code section 69955, subdivision (e). Defendant's *coram nobis* petition asserts the reporter's transcript would show the sentencing court "noticed a[n] issue with the agreement," entered a modified judgment "of a [ ]felony[ ] [second] degree burglary[ ]," and imposed a mid-term sentence of two years in prison.

When defendant was convicted of another strike offense in 2012,[2] he admitted the prior first degree burglary conviction.[3] But after that 1998 conviction was used to enhance his sentence in the 2012 case, defendant launched a series of collateral attacks on the 1998 judgment. The petition at issue in this case is his latest effort.

The primary contention in defendant's *coram nobis* petition is the claim that the Glendale Municipal Court judge sentencing him in 1998 lacked jurisdiction to impose a sentence for first degree burglary. In the alternative, he claims that court modified

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[2] Los Angeles County Superior Court case no. PA069032-01 (the 2012 case).

[3] The trial court in the 2012 case determined "there was an error in the minute order and the abstract of judgment" in the 1998 case insofar as they suggested Alexander "had been convicted of two counts." The minute orders from the 1998 plea and sentencing hearings were amended nunc pro tunc to clarify Alexander was convicted of only one count of first degree burglary.

the judgment to second degree burglary at the sentencing hearing.

The trial court held a brief hearing on the *coram nobis* petition at which defendant was neither present nor represented by counsel. The trial court opted to construe the petition as "a Prop 47 motion" and denied it because defendant "is statutorily ineligible for Prop 47 given his conviction for first degree residential burglary."

Although the trial court may have misunderstood the nature of defendant's *coram nobis* petition, defendant still must show prejudicial error to prevail on appeal. (Cal. Const., art. VI, § 13.) We have scrutinized defendant's *coram nobis* claims and they obviously do not warrant relief. (*People v. Kim* (2009) 45 Cal.4th 1078, 1091 ["The grounds on which a litigant may obtain relief via a writ of error *coram nobis* are narrower than on habeas corpus [citation]; the writ's purpose 'is to secure relief, where no other remedy exists, from a judgment rendered while there existed some fact which would have prevented its rendition if the trial court had known it and which, through no negligence or fault of the defendant, was not then known to the court' [citation]"].) We therefore summarily dismiss his appeal. (*People v. Totari* (2002) 28 Cal.4th 876, 885, fn. 4 [a court may summarily dismiss an appeal from the denial of a petition for a writ of error *coram nobis* if it determines the petitioner has not made a prima facie showing of merit].)

DISPOSITION

The appeal is dismissed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.