Filed 8/1/17 P. v. Jones CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>LAWRENCE VERNON JONES,<br><br>Defendant and Appellant. | B276522<br><br>(Los Angeles County Super. Ct. No. BH010715) |

APPEAL from a judgment of the Superior Court of Los Angeles County, William C. Ryan, Judge. Dismissed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1994, appellant Lawrence Vernon Jones was convicted of perpetrating assault, mayhem, and various sex crimes upon a woman and sentenced to 78 years in prison. This court affirmed his convictions on direct appeal (*People v. Jones* (April 5, 1995, B084730) [nonpub. opn.]), but ordered a limited remand for the trial court to stay execution of sentence on the mayhem count and correct clerical errors in the abstract of judgment. On remand, the trial court stayed appellant's mayhem sentence as directed.

On May 4, 2016, appellant filed a document he captioned "PETITION FOR WRIT OF MANDATE/PROHIBITION." In it, he alleged that the California Department of Corrections and Rehabilitation (CDCR) has "'illegally' been adjusting my Term on a April 04, 1994 sentence, Case No LA015282 . . . useing a number of illegal-type Enhancing Schemes, on at least 9-12 times, on ONE (1) alleged 09/11/1993 date, that I was found 'NOT GUILTY' by a Jury, on March 02, 1994." All errors and emphases in original.) Appellant attached several exhibits to his petition: a purportedly "wrong" Classification Committee Chrono dated July 8, 2015; a purportedly "wrong" Legal Status Summary dated July 4, 1995; a Legal Status Summary dated January 11, 2013 purportedly showing "illegal (Pen. C. § 654) Enhancements"; a minute order documenting his 1993 preliminary hearing, at which the trial court found insufficient cause on eight of the 19 counts alleged against him, including those then-numbered seven through 11; two blank, unsigned Not Guilty verdict forms from his 1994 trial, for counts one and 11; the cover page of his pre-conviction probation report showing an "N/A" in a box labeled "CONVICTED of the crimes of"; and an "Inmate Priority Pass" for a classification hearing with an issue date of April 8, 2016 and an appointment date of April 13, 2016.

The label given a petition, action or other pleading is not determinative. The true nature of a petition is determined by the facts alleged and remedy sought therein, and a trial court has the authority to treat one type of writ petition as another type when it is procedurally appropriate to do so. (*Cox v. Superior Court of Amador County* (2016) 1 Cal.App.5th 855, 858-859.) The trial court here construed appellant's petition as a petition for a writ of habeas corpus. It denied the petition on June 16, 2016, noting that appellant "fails to explain what sentence enhancements are purportedly unlawful." The court further stated, "It appears Petitioner claims the CDCR is erroneously incarcerating him for crimes in which he was found not guilty by the jury—genital penetration by foreign object (count 1), and assault by force likely to cause great bodily injury (count 11). In support of his claim, Petitioner attaches blank jury verdict forms that have not been signed. These unsigned verdict forms do not reflect the jury's verdict, as Petitioner was in fact found guilty of counts 1 and 11. [Citations.] The Legal Status Summary provided by Petitioner reflects that the CDCR is correctly applying the sentence imposed by the court." The trial court cautioned appellant that, if he was attempting to deceive the court by relying on the unsigned verdict forms, doing so was improper.

Appellant timely filed a notice of appeal. After review of the record, appellant's court-appointed counsel filed an opening brief raising no issues but asking this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442 (*Wende*).) On February 22, 2017, we advised appellant he had 30 days to file a supplemental letter brief raising any issue he wished this court to consider. Appellant requested an extension, which we granted.

Appellant filed his supplemental letter brief on April 26, 2017. In it, he requested that we review "the Los Angeles County Superior Court ruling dated: June 16, 2016, the court states petitioner was found guilty of count 11. . . . If the court will please review petitioners preliminary hearing transcripts . . . count 11 was dismissed." Appellant further asserted that the "court record and abstract of judgment are inconsistent with each other," and claimed he "is currently incarcerated for crimes he did not commit, was not found guilty of and in some cases was not even tried for."

Counsel asserts in the *Wende* brief that this appeal from the denial of appellant's habeas petition "is authorized by Penal Code section 1237, subd. (b)" as an "order after judgment affecting appellant's substantial rights." We disagree with this assertion. Although the People may appeal when a petition for a writ of habeas corpus is granted, "[n]o appeal lies from an order denying a petition for a writ of habeas corpus." (*Jackson v. Superior Court* (2010) 189 Cal.App.4th 1051, 1064; *In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; see also Pen. Code, § 1506; Cal. Rules of Court, rule 8.388.) This appeal accordingly must be dismissed. The proper vehicle for review is a petition for writ of habeas corpus. (*People v. Garrett* (1998) 67 Cal.App.4th 1419, 1423.)

Even if the order were appealable, appellant's contentions would not have merit. Appellant was tried for and convicted of count 11, assault by means of force likely to cause great bodily injury (Pen Code, § 245, subd.(a)(1)). We upheld this conviction on appellant's direct appeal. The blank, unsigned Not Guilty verdict form for this count is not evidence to the contrary. Nor is the pre-conviction probation report, which accurately states that,

at the time of its preparation—i.e., pre-conviction—defendant had not been convicted of any of the charged crimes. Likewise, the preliminary hearing transcript dismissing then-numbered count 11 of 19 does not demonstrate that defendant "is currently incarcerated for crimes he did not commit, was not found guilty of, and in some cases was not even tried for." It appears that the counts remaining after the preliminary hearing (1-6, 13-15, and 19) were renumbered one through 11 prior to or during trial. Defendant was tried for and convicted of 11 crimes, including one count of assault by means of force likely to produce great bodily injury, regardless of the numbering scheme employed.

We have reviewed the record on appeal. We are satisfied that appellant's attorney has fully complied with the responsibilities of counsel, and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal. 4th 106, 123-124.)

**DISPOSITION**

The appeal is dismissed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.