Filed 6/1/17 P. v. Baptiste CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DARREN LYNDON BAPTISTE, Defendant and Appellant.	B271220 (Los Angeles County Super. Ct. No. VA119158)

THE COURT:*

Darren Lyndon Baptiste (defendant) stands convicted of two counts of attempted murder (Pen. Code, §§ 187, subd. (a)

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* CHAVEZ, Acting P. J., HOFFSTADT, J., GOODMAN, J.†

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

& 664),[1] two counts of assault with a semiautomatic firearm (§ 245, subd. (b)), and one count of attempted second degree robbery (§§ 211 & 664). He appealed his conviction and sentence, and we affirmed both in 2014. (See *People v. Baptiste* (Apr. 2, 2014, B246023 [nonpub. opn.].)

In 2016, defendant filed a self-styled "Motion To Vacate Judgment For Lack of Jurisdiction" raising a single claim—namely, that the trial court lacked jurisdiction because the original complaint filed against him was signed by someone other than the complainant in violation of section 806. The trial court summarily denied the motion, and defendant filed a timely notice of appeal. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no issues. We invited defendant to file a supplemental brief. Defendant filed a letter brief renewing his challenge to the court's jurisdiction, and raised two entirely new arguments. We sought additional briefing from the parties on one of the two new arguments defendant raised in his letter brief.

As a procedural matter, we construe defendant's self-styled motion before the trial court as a petition for a writ of habeas corpus (habeas petition). Although defendant styled his motion differently, our task is to examine the "true nature" of a filing and to construe it as such. (*Cox v. Superior Court* (2016) 1 Cal.App.5th 855, 858-859.) Because defendant is a person in custody who is attacking the legality of his conviction and/or sentence, the proper procedural vehicle is a habeas petition. (See § 1473, subd. (a) [habeas relief is available to any "person unlawfully imprisoned or restrained of his or her liberty"]; *People*

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

v. Stanworth (1974) 11 Cal.3d 588, 595 [construing filing as habeas petition].) What is more, because a defendant may not appeal a trial court's denial of a habeas petition, we have the discretion to construe a defendant's appeal as the filing of a separate petition for habeas relief before this court. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; see generally § 1475.) Because this is an extraordinary case in which the Attorney General has conceded error on an issue having a profound effect on defendant's sentence, we elect to exercise that discretion in this case.

On the merits, we conclude that neither of the arguments defendant levels at the trial court's jurisdiction to try him—one old and one new—warrants relief. First, defendant has waived the challenge he made before the trial court regarding the identity of the person who signed the complaint because such challenges are only validly made *before* the magistrate holds the defendant to answer on the complaint. (E.g., *Wells v. Justice Court for Merced Judicial Dist.* (1960) 181 Cal.App.2d 221, 225.) Here, defendant is objecting to the defect in the signature for the first time years after his conviction. Second, the further challenge to the trial court's jurisdiction that defendant raises for the first time in his supplemental brief also lacks merit. He argues that the felony complaint alleged insufficient facts for the magistrate to assess probable cause to hold him to answer. However, that argument became moot once defendant was subsequently held to answer after a full preliminary hearing where the magistrate found probable cause to believe defendant committed the charged offenses on the basis of *evidence*. (§§ 739, 859, 872.) At that point, the sufficiency of the *allegations* became irrelevant.

We nevertheless conclude that defendant is entitled to relief on a claim he raises for the first in his letter brief—namely, that the trial court erred in imposing the 20-year enhancement for personally and intentionally discharging a firearm (§ 12022.53, subd. (c)). This enhancement may be applied only if (1) a defendant *personally* discharged a firearm during the commission of the underlying crime, or (2) some other *principal* in the crime's commission discharged a firearm and the crime benefitted a criminal street gang. (§ 186.22, subds. (b) & (e); *People v. Elizalde* (2015) 61 Cal.4th 523, 539; *People v. Brookfield* (2009) 47 Cal.4th 583, 590.) In this case, it is undisputed that defendant did not personally discharge a firearm during the drive-by shooting that gave rise to this case, and the jury in this case found *not true* the allegation that defendant's crime benefitted a criminal street gang. As a result, the trial court erred in imposing the 20-year enhancement under section 12022.53, subdivision (c). The People agree. Because the trial court's application of this enhancement results in an unauthorized sentence (that is, one that exceeds the lawful maximum), we may order it corrected in a habeas petition, even though it was not raised on appeal. (*In re Harris* (1993) 5 Cal.4th 813, 838-840.)

DISPOSITION

Defendant's convictions are affirmed. The trial court's imposition of a 20-year enhancement under section 12022.53, subdivisions (c) and (e)(1), is reversed, and the matter is remanded to the trial court for resentencing consistent with this opinion.

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