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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.

RICKY BROWN,

Defendant and Appellant.

B296347

(Los Angeles County
Super. Ct. No. TA075005)

APPEAL from an order of the Superior Court of
Los Angeles County, Tammy Chung Ryu, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On November 2, 2004, a jury convicted defendant Ricky Brown of second degree murder and found true that during the commission of the crime, he personally and intentionally discharged a firearm causing death in violation of Penal Code section 12022.53, subdivision (d).¹ On February 15, 2005, the trial court sentenced defendant to 15 years to life on the second degree murder conviction and an additional 25 years on the enhancement for personal and intentional use of a firearm causing death. On October 26, 2005, we affirmed.

On January 2, 2019, Brown filed a petition for resentencing pursuant to section 1170.95 in which he contended he was eligible for resentencing because he was convicted of second degree murder pursuant to a felony murder theory or the doctrine of natural and probable consequences. On February 1, 2019, the trial court denied the petition. On March 11, 2019, Brown filed a timely notice of appeal.

Appointed appellate counsel filed an appellate brief requesting this court review the record for any error as required by *People v. Wende* (1979) 25 Cal.3d 436. This court permitted defendant the opportunity to file a supplemental brief. We have received no supplemental brief.

Section 1170.95 permits a person convicted of felony murder or murder under a natural and probable consequences theory to petition for vacation of the conviction and resentencing on any remaining counts if all the conditions enumerated in section 1170.95, subdivision (a) apply. Among those conditions are that the charging document “allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine” (§ 1170.95, subd. (a)(1)), and the petitioner “could not be convicted of first or

¹ All unspecified statutory citations are to the Penal Code.

second degree murder because of changes to Section 188 or 189 made effective January 1, 2019” (§ 1170.95, subd. (a)(3)).² The referenced changes do not provide resentencing relief if the petitioner was the “actual killer.” (§ 189, subd. (e)(1).)

Here, the jury’s finding that defendant personally and intentionally discharged a firearm causing death precludes the possibility that he was convicted on a felony murder or natural and probable consequences theory. This conclusion renders him ineligible for resentencing relief under section 1170.95.³

We have reviewed the record and find no arguable issue. Appointed counsel has fully complied with her responsibilities. (*People v. Kelly* (2006) 40 Cal.4th 106, 125–126; *People v. Wende*, *supra*, 25 Cal.3d at pp. 441–442.)

² These changes were enacted by Senate Bill 1437 (2017–2018 Reg. Sess.) ch. 1015, §§ 1–4. In *People v. Martinez* (2019) 31 Cal.App.5th 719 (*Martinez*), Division Five of our court held that Senate Bill 1437 “creates a special mechanism that allows those persons to file a petition in the sentencing court seeking vacatur of their conviction and resentencing. In doing so, section 1170.95 does not distinguish between persons whose sentences are final and those whose sentences are not.” (*Martinez*, at p. 727.)

³ The trial court also noted that the prosecution “did not proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.”

DISPOSITION

The order is affirmed.

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BENDIX, J.

We concur:

JOHNSON, Acting P. J.

WEINGART, J.*

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