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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JOE RODRIGUEZ, Defendant and Appellant.	B287573 (Los Angeles County Super. Ct. No. BA405944)

APPEAL from an order of the Superior Court for the County of Los Angeles. Katherine Mader, Judge. Affirmed; petition denied.

Melanie K. Dorian, 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 E. Mercer and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Joe Rodriguez received a sentence of 140 years to life following his conviction of one count of murder, and two counts of attempted murder, for his participation in a gang-related shooting. (*People v. Rodriguez* (Oct. 20, 2016, B265581) [nonpub. opn.].) The trial court denied defendant's posttrial motion for discovery pursuant to Penal Code section 1054.9, finding that the statute did not apply to defendant, because he was not serving a life sentence without the possibility of parole. Defendant appeals, arguing that his sentence was the functional equivalent of a life sentence without the possibility of parole. Exercising our discretion to treat his appeal as a petition for writ of mandate, we deny defendant's request for relief.

BACKGROUND

We previously affirmed defendant's conviction of first degree murder (Pen. Code, § 187, subd. (a)), and two counts of deliberate, premeditated, and willful attempted murder (§§ 187, subd. (a), 664, subd. (a)), for which he originally received a sentence of 130 years to life in prison, consisting of 25 years to life for the murder count, doubled due to a strike prior, plus 25 years for firearm and gang enhancements. He also received two consecutive 25-year-to-life terms for the attempted murder counts, plus one 5-year enhancement under section 667, subdivision (a). We modified defendant's sentence, after finding that the abstract of judgment did not properly reflect the imposition of the five-year section 667, subdivision (a) enhancement for one of the attempted murder counts, and that the enhancement was erroneously not applied to the remaining counts for which defendant also received indeterminate sentences, which increased defendant's sentence to 140 years to life. (*People v. Rodriguez*, *supra,* B265581.) Defendant's petition

for review was denied by our Supreme Court, and his petition for writ of certiorari was denied by the U.S. Supreme Court.[1]

Following remittitur, defendant filed a motion for discovery under Penal Code section 1054.9 in the trial court, "in anticipation of filing a petition for a writ of habeas corpus," seeking evidence in the possession of the prosecuting attorney, such as trial exhibits, forensic evidence, and photographs, among other evidence. The motion acknowledged that the statute allows those sentenced to death or life without the possibility of parole to seek postconviction discovery to aid them in filing a petition for writ of habeas corpus, but argued that defendant's sentence "is an exaggerated sentence that does not allow [him] the opportunity to parole and is very much equivalent to any other inmate sentenced to death or life without parole." The trial court denied the motion, finding that defendant "is not serving a sentence of life without [the possibility of] parole" which is a "requirement for discovery pursuant to Penal Code section 1054.9." Defendant appealed.

DISCUSSION

As an initial matter, defendant acknowledges that the order appealed from may only be challenged by petition for writ of mandate. (See Pen. Code, § 1054.9; *In re Steele* (2004) 32 Cal.4th 682, 692, fn. 2.) He asks us to exercise our discretion to treat his appeal as a petition for writ of mandate, and to reach its merits. (See *People v. Payne* (1988) 202 Cal.App.3d 933, 936.) In the interest of judicial economy, we will reach the merits of defendant's appeal. (*Sears, Roebuck & Co. v. National Union*

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[1] We grant defendant's request that we take judicial notice of our slip opinion in his earlier appeal, remittitur, and the amended abstract of judgment.

Fire Ins. Co. of Pittsburgh (2005) 131 Cal.App.4th 1342, 1348-1350.)

Penal Code section 1054.9 provides, in pertinent part, that "[u]pon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall . . . order that the defendant be provided reasonable access to any of the materials . . . . [¶] . . . in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial." (*Id.*, subds. (a), (b).)

Defendant contends that Penal Code section 1054.9 applies to defendants serving prison terms which are the functional equivalent of a sentence of life without the possibility of parole, where parole eligibility falls outside of a defendant's natural lifespan. In making this argument, he relies on cases considering whether de facto life sentences for minors constitute cruel and unusual punishment, and cases interpreting Proposition 47 to apply to unenumerated theft offenses. (See, e.g., *People v. Caballero* (2012) 55 Cal.4th 262, 268 [finding that sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date falling outside the offender's natural life expectancy constitutes cruel and unusual punishment]; *People v. Martinez* (2018) 4 Cal.5th 647, 657 [discussing breadth of Prop. 47].) These cases have no application here.

The fundamental task in construing a statute is to ascertain the intent of the legislators to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.)

"If the plain language of the statute is clear and unambiguous, [the courts'] inquiry ends, and [one] need not embark on judicial construction." (*People v. Johnson* (2002) 28 Cal.4th 240, 244.) "In the construction of a statute . . . , the office of the Judge is simply to ascertain and declare what is in terms or substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . . ." (Code Civ. Proc., § 1858.)

By its plain language, Penal Code section 1054.9 applies only to "a case in which a sentence of death or of life in prison without the possibility of parole has been imposed . . . ." (*Id*., subd. (a).) The statute is unambiguous in limiting its application, and under well-settled principles of statutory construction, we may not read into the statute "de facto" or "functional equivalent" language.

Even if we were to resort to extrinsic aids to help interpret Penal Code section 1054.9 (which is not required, because the statute is unambiguous), its legislative history supports our conclusion. When Senate Bill No. 1391 (2001-2002 Reg. Sess.) was originally introduced, proposing the creation of section 1054.9, its discovery provisions were to be available to anyone convicted of a felony. The Attorney General opposed the bill on the basis that it created an unreasonable burden on law enforcement and prosecutors to maintain files for all felons. Therefore, the legislation was amended to narrow its scope to apply only to inmates sentenced to life without possibility of parole or death. (*Catlin v. Superior Court* (2011) 51 Cal.4th 300, 305-306 [discussing legislative history of § 1054.9].) The Legislature intended a narrow scope; had it intended for the law to apply to de facto life sentences, it would have so provided.

DISPOSITION

The order is affirmed; defendant's petition for writ of mandate is denied.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

DUNNING, J.*

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