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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE GEORGE MORENO, Defendant and Appellant.	G064310 (Super. Ct. No. INF1501401) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Riverside, John D. Molloy, Judge. Reversed and remanded with directions.

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Robin Urbanski, Seth M. Friedman and Juliet W. Park, Deputy Attorneys General, for Plaintiff and Respondent.

Lawrence George Moreno appeals from a postjudgment order denying his petition for resentencing at the prima facie stage under Penal Code section 1172.6 (all undesignated statutory references are to this code). Moreno argues the record of conviction does not refute his allegation he was convicted under an invalid theory of liability and could not be convicted of first degree murder under current law. We agree. We reverse and remand with directions.

BACKGROUND

In 2015, the prosecution filed a felony complaint against Moreno, which was later amended by interlineation (complaint). Pursuant to a plea agreement, Moreno pleaded guilty to the attempted murder of Jane Doe (count 1) and of John Doe (count 2). (§§ 664, 187, subd. (a).) As to both counts, Moreno admitted he personally discharged a firearm under section 12022.53, subdivision (c). He also admitted he personally inflicted great bodily injury on Jane Doe under section 12022.7, subdivision (e) as to count 1. Additionally, he admitted to having suffered a prior serious felony conviction (§ 667, subd. (a)) and a prior strike conviction (§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). The trial court imposed a prison term of 55 years.

At the plea hearing, the trial court questioned Moreno regarding his guilty plea. The court asked inter alia: (1) did Moreno, "in fact, . . . attempt to murder a female individual?"; (2) did Moreno admit it was true he "personally discharged a firearm through the commission" of the attempted murder of Jane Doe and that he "personally inflict[ed] great bodily injury during the commission" of this attempted murder?; (3) did Moreno, "in fact, . . . attempt to murder a male individual?"; and (4) did Moreno admit it was true that during the commission of the attempted murder of John Doe, he "personally and intentionally discharged a firearm"? Moreno replied yes to

these questions. The court accepted the plea and found a factual basis for such.

In 2022, Moreno filed a petition for resentencing under former section 1170.95, now renumbered as section 1172.6. (Stats. 2022, ch. 58, § 10.) The trial court denied the petition at the prima facie stage. It concluded Moreno was the actual perpetrator of the crimes. The court explained, given Moreno admitted to personally discharging a firearm as to both attempted murder counts and inflicting great bodily injury as to count 1, those admissions "render[ed] him ineligible for relief." Additionally, it noted the complaint charged a single defendant.

Moreno timely appealed.

DISCUSSION

I.

SECTION 1172.6

Senate Bill No. 1437 (2017–2018 Reg. Sess.) (Stats. 2018, ch. 1015) amended the felony murder rule and eliminated the natural and probable consequences doctrine as it relates to murder "'to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.'" (*People v. Lewis* (2021) 11 Cal.5th 952, 959 (*Lewis*).) Senate Bill No. 1437 also created procedures "for convicted murderers who could not be convicted under the law as amended to retroactively seek relief." (*Lewis*, at p. 959.) The Legislature "has since expanded this path to allow relief for those with 'attempted murder' convictions based on 'the natural and probable consequences doctrine.'" (*People v. Patton* (2025) 17 Cal.5th 549, 558.)

The process begins when a defendant previously convicted of a qualifying offense files a petition for relief. (§ 1172.6, subds. (a) & (b)(1).) Once the trial court receives the petition, it shall appoint counsel if requested by the petitioner. (§ 1172.6, subd. (b)(1)–(3).) After the prosecution has had an opportunity to file a response and the petitioner to file a reply, the court shall "hold a hearing to determine whether the petitioner has made a prima facie case for relief." (§ 1172.6, subd. (c).)

"At the prima facie stage, a court must accept as true a petitioner's allegation that he or she could not currently be convicted of a homicide offense because of changes to section 188 or 189 made effective January 1, 2019, unless the allegation is refuted by the record" of conviction. (*People v. Curiel* (2023) 15 Cal.5th 433, 463.) "And this allegation is not refuted by the record unless the record conclusively establishes every element of the offense. If only *one* element of the offense is established by the record, the petitioner could still be correct that he or she could not currently be convicted of the relevant offense based on the absence of *other* elements." (*Ibid.*)

"The record of conviction will necessarily inform the trial court's prima facie inquiry under section 117[2.6], allowing the court to distinguish petitions with potential merit from those that are clearly meritless." (*Lewis*, *supra*, 11 Cal.5th at p. 971.) "'[I]f the record, including the court's own documents, "contain[s] facts refuting the allegations made in the petition," then "the court is justified in making a credibility determination adverse to the [defendant]."'" (*Ibid.*) "It is only where the record of conviction establishes the petition lacks merit as a *matter of law* that the court may deny the petition without a hearing." (*People v. Lopez* (2023) 88 Cal.App.5th 566, 576.) "[A]t this preliminary juncture, a trial court should not engage in 'factfinding

involving the weighing of evidence or the exercise of discretion.'" (*Lewis*, at p. 972.) When the defendant's "conviction resulted from a guilty plea rather than a trial, the record of conviction includes the facts 'the defendant admitted as the factual basis for a guilty plea'" (*People v. Gaillard* (2024) 99 Cal.App.5th 1206, 1211–1212) and the defendant's "express admissions at the plea colloquy" (*People v. Fisher* (2023) 95 Cal.App.5th 1022, 1029).

If the court denies the petition without issuing an order to show cause, it must state its reasons. (§ 1172.6, subd. (c).) However, if the petitioner makes a prima facie showing of entitlement to relief, the trial court must issue an order to show cause. (*Ibid.*; *People v. Strong* (2022) 13 Cal.5th 698, 708.)

A reviewing court conducts a de novo review of a trial court's denial of a section 1172.6 petition at the prima facie stage. (*People v. Williams* (2022) 86 Cal.App.5th 1244, 1251.)

II.

THE TRIAL COURT ERRED BY SUMMARILY DENYING THE PETITION

The record of conviction does not conclusively establish Moreno's ineligibility for relief. The complaint charged Moreno with two counts of attempted murder without premeditation. "Because the crime of attempted murder was generically charged, the complaint allowed the prosecution to proceed on a theory of attempted murder under the natural and probable consequences doctrine." (*People v. Estrada* (2024) 101 Cal.App.5th 328, 337–338 (*Estrada*).) During the plea colloquy, Moreno "did not plead to any particular type of malice when pleading to attempted murder. Further, he did not admit to any specific theory of attempted murder. Instead, the record shows that he pleaded to the generic charge of attempted murder without the

'willful, deliberate, and premeditated' allegation. He did not admit he harbored an intent to kill." (*Id.* at p. 338.)

Similarly, Moreno's enhancement admissions "do not establish that he acted with the intent to kill or refute that he was convicted on a theory of imputed malice. As with pleading guilty to a criminal offense, a plea or admission of a sentencing enhancement is likewise deemed a judicial admission of only elemental facts necessary to the enhancement." (*Estrada, supra,* 101 Cal.App.5th at p. 338.) The enhancements alleged pursuant to section 12022.53, subdivision (c) and section 12022.7, subdivision (e) "require only a general intent to use a deadly weapon or inflict bodily injury." (*Estrada,* at p. 338. [discussing section 12022.7]; see *People v. Offley* (2020) 48 Cal.App.5th 588, 598 [discussing section 12022.53, subdivision (d)].) Therefore, Moreno's enhancement admissions "do not establish that he acted with the requisite malice aforethought." (*Estrada,* at p. 339.)

The Attorney General argues Moreno was the actual perpetrator, citing *People v. Muhammad* (2024) 107 Cal.App.5th 268. The Attorney General asserts the record of conviction showed the prosecution was pursuing only this theory of the crime at the time of the plea. The Attorney General explains: the complaint charged Moreno alone, Moreno "was the only person who had entered a plea as reflected in the plea colloquy," and Moreno's factual admissions supported the theory he was the actual perpetrator who acted alone.

As we discussed *ante*, the plea colloquy and factual admissions failed to establish Moreno acted alone and was the actual perpetrator. While the complaint here charged only Moreno, "a charging decision does not establish any facts as a matter of law." (*Estrada, supra,* 101 Cal.App.5th at p. 339.) "[T]his single charging document does not foreclose the possibility of

other people having been charged for related crimes." (*Ibid.*) Nor does it "foreclose the prosecution from presenting imputed malice before a jury regardless of whether it charged others." (*Ibid.*) Therefore, the complaint here "does not establish ineligibility as a matter of law, where" Moreno's "'"prima facie bar was intentionally and correctly set very low."'" (*Ibid.*)

DISPOSITION

The postjudgment order denying Moreno's section 1172.6 petition is reversed. The matter is remanded to the trial court for the issuance of an order to show cause and an evidentiary hearing pursuant to section 1172.6, subdivisions (c) and (d).

MOTOIKE, ACTING P. J.

WE CONCUR:

GOODING, J.

BANCROFT, J.*

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