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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. SHAWN LAMONT BROWN, Defendant and Appellant.	F088921 (Super. Ct. No. F15904751) **OPINION**

APPEAL from a judgment of the Superior Court of Fresno County. Arlan L. Harrell, Judge.

Kyle Gee, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Kimberley A. Donohue, Assistant Attorney General, Eric L. Christoffersen and Robert C. Nash, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

In October 2017, a jury found appellant Shawn Lamont Brown and a codefendant guilty of the first degree, premeditated murder of Von Randell Correia, Jr. The jury also found appellant personally and intentionally discharged a firearm proximately causing the death of the victim. In 2024, appellant filed a petition for resentencing relief under Penal Code section 1172.6[1] and requested the appointment of counsel. The trial court denied the petition at the prima facie stage, finding the record conclusively established appellant was ineligible for resentencing relief as a matter of law.

On appeal, appellant argues the trial court erred under state law by failing to properly consider allowing appellant to represent himself at the prima facie stage, and that this error is structural and requires mandatory reversal of the trial court's order. The Attorney General argues that even if there is a right of self-representation under state law at the section 1172.6 prima facie stage, the court did not err because appellant's purported request was equivocal. Further, even assuming error, the Attorney General argues it was subject to a harmless error analysis, and it was not prejudicial.

We agree with the Attorney General. Assuming, arguendo, that there is a state-law right of self-representation at the section 1172.6 prima facie stage, the trial court did not err in addressing appellant's purported request to represent himself. Moreover, even assuming an error in this regard, it was subject to a harmless error analysis under *People v. Watson* (1956) 46 Cal.2d 818 (*Watson*), and appellant has not established any prejudice.[2]

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

2 Under the *Watson* harmless error rule, a reviewing court must reverse if it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. (*Watson, supra,* 46 Cal.2d at p. 836.)

FACTUAL BACKGROUND

Based on evidence presented at trial, appellant and a confederate (Thomas) were seen by witnesses at an apartment building's outdoor courtyard around midnight on July 28, 2015. Witnesses saw someone they later identified as appellant walk toward the complex's laundry room, and then they heard gunshots. A gunshot victim was later found at the back of the complex. After the gunshots, witnesses saw appellant leave the courtyard, heard car doors closing in an adjacent parking lot, and saw a car drive away from the apartment complex. An on-duty police officer happened to be in the vicinity and heard the gunshots. Minutes later, the officer stopped the car that had been seen leaving the apartment complex. Appellant, Thomas and another person were inside the vehicle. The firearm that killed the victim was located approximately 100 feet from where that vehicle was stopped. Gloves found on the floor of the vehicle where Brown was sitting when the vehicle was pulled over tested positive for gunshot residue.[3]

The prosecutor's theory, as evidenced by the firearm enhancements alleged in the information and as argued to the jury, was that appellant shot and killed Correia while Thomas directly aided and abetted the murder. The jury was instructed on murder under CALCRIM No. 520, first degree premeditated murder under CALCRIM No. 521, and direct aiding and abetting principles under CALCRIM Nos. 400 and 401.

The jury found appellant and Thomas guilty of first degree willful, deliberate and premeditated murder (§§ 187, subd. (a), 189, subd. (a)). The jury found true special allegations that appellant proximately caused the victim's death by personally and intentionally discharging a firearm within the meaning of section 12022.53, subdivision (d); and that appellant personally used a firearm during the commission of the offense within the meaning of section 12022.5, subdivision (a). As to Thomas, the

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[3] These facts, provided only for context, are derived from our opinion on appellant's direct appeal. (*People v. Brown* (Sept. 9, 2021, F077143) [nonpub. opn.].)

jury found true a firearm enhancement that Thomas was a principal in a crime where a firearm was used, regardless of whether Thomas was personally armed with a firearm. (§ 12022, subd. (a)(1).) Appellant was sentenced to 25 years to life for the first degree murder conviction (§ 190, subd. (a)), and a consecutive 25-year-to-life term for personally and intentionally discharging a firearm under section 12022.53, subdivision (d), causing the victim's death.

In 2024, appellant sought resentencing relief under section 1172.6, which the People opposed. Although represented by counsel, appellant submitted a pro se statement in reply to the People's opposition. The document was marked "RECEIVED" by the trial court on October 2, 2024, but it was apparently not filed. In this document, appellant made various arguments about the evidence and arguments at trial and that an evidentiary hearing was required for him to submit exculpatory evidence that had not been admitted at trial.

At the prima facie hearing on October 25, 2024, defense counsel indicated appellant wanted him to raise habeas corpus issues that counsel deemed irrelevant to the section 1172.6 proceedings, and counsel noted his belief that appellant wished to represent himself. After defense counsel presented the general nature of the issues appellant wished counsel to address, the court concluded they were irrelevant to the section 1172.6 prima facie inquiry. The court then explained its reasons for denying the petition.

Appellant requested to be heard personally and explained to the court that another attorney told him to address ineffective assistance of counsel issues that appellant had filed via a habeas petition and a posttrial discovery motion. Appellant also addressed his claim there was exculpatory evidence that his trial counsel did not present to the jury at his original trial. Finally, appellant indicated the other attorney had told him to ask the court what to do about his wrongful prosecution. The court explained it had no knowledge of a habeas petition and, in any event, it would not be addressed by the

judicial officer who presided over the trial; the court also explained it could not give appellant legal advice about his habeas petition and ineffective assistance of counsel claims. This appeal followed.

DISCUSSION

I. Section 1172.6

Effective January 1, 2019, Senate Bill No. 1437 (2017–2018 Reg. Sess.) (Senate Bill 1437) eliminated the natural and probable consequences theory of murder. (Stats. 2018, ch. 1015, § 1, subd. (f).) Under this doctrine, "'"[a] person who knowingly aids and abets criminal conduct is guilty of not only the intended crime [target offense] but also of any other crime the perpetrator actually commits [nontarget offense] that is a natural and probable consequence of the intended crime."'" (*People v. Hin* (2025) 17 Cal.5th 401, 441 (*Hin*), quoting *People v. Medina* (2009) 46 Cal.4th 913, 920.) Accordingly, Senate Bill 1437 amended section 188 to provide that, except as to the law governing felony murder, to be convicted of murder, "a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime." (*Id.*, subd. (a)(3).)

In addition, Senate Bill 1437 limited the scope of the felony-murder rule by "providing that a defendant who was neither the actual killer nor acted with the intent to kill can be liable for murder only if he was a 'major participant in the underlying felony and acted with reckless indifference to human life.'" (*Hin, supra,* 17 Cal.5th at p. 441, quoting § 189, subd. (e)(3).)

Finally, Senate Bill 1437 created a procedural mechanism for those convicted under the theories of murder made invalid pursuant to these changes in the law to seek retroactive relief. (§ 1172.6; *People v. Lewis* (2021) 11 Cal.5th 952, 959–960 (*Lewis*).) Under what is now section 1172.6, the process begins by filing a petition containing a declaration that all the requirements for eligibility are met. (*Id.*, subd. (b)(1)(A).) "When the trial court receives a petition containing the necessary declaration and other required

information, the court must evaluate the petition 'to determine whether the petitioner has made a prima facie case for relief.'" (*People v. Strong* (2022) 13 Cal.5th 698, 708, quoting § 1172.6, subd. (c).) "If the petition and record in the case establish conclusively that the defendant is ineligible for relief, the trial court may dismiss the petition." (*Strong, supra*, at p. 708, citing § 1172.6, subd. (c) & *Lewis, supra*, at pp. 970–972; accord, *People v. Curiel* (2023) 15 Cal.5th 433, 460 (*Curiel*).)

If, on the other hand, the defendant has made a prima facie showing of entitlement to relief, the court is required to issue an order to show case. (§ 1172.6, subd. (c).) The court is required to hold an evidentiary hearing at which the prosecution bears the burden of proving beyond a reasonable doubt that the petitioner is guilty of murder or attempted murder under the law as amended by Senate Bill 1437. (§ 1172.6, subd. (d)(1).) "If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resentenced on the remaining charges." (*Id.*, subd. (d)(3).)

II. Discussion

Although conceding he does not have a Sixth Amendment right to represent himself in a section 1172.6 proceeding, appellant argues he has a right to do so under the California Constitution and, by implication, under section 1172.6, subdivision (b)(3). Appellant argues the trial court failed to acknowledge his request for self-representation at the hearing, giving rise to a structural error that requires automatic reversal.

The Attorney General argues that even if appellant has a *statutory* right to self-representation, appellant's purported request to represent himself was equivocal and the trial court did not err by not granting it. Further, the Attorney General argues any error in denying appellant's request to represent himself is subject to a harmless error analysis, and no prejudice has been shown.

A. Additional Background

At the prima facie hearing, the trial court asked whether the parties were ready to proceed, and defense counsel responded that he "want[ed] to make [a] couple of comments why I feel that [appellant] wants to represent himself." The court responded it was not concerned with *why* the appellant may wish to represent himself, but whether he *is* seeking to represent himself. Defense counsel explained that appellant was insisting counsel raise irrelevant issues pertaining to evidentiary matters from the original trial. After counsel presented those issues generally, the court explained they were "not something that's before this Court …." Defense counsel stated he had advised his client likewise, but appellant insisted that counsel raise those issues. Appellant asked to address the court, but the court instructed him to speak with his attorney first. Defense counsel then explained that appellant had purportedly filed his own habeas petition with the superior court. The court responded that, as the original trial judge, it would not receive any habeas petition. The court noted it was aware of appellant's pro se document submitted in response to the People's opposition, but indicated it could not be considered because appellant was represented by counsel. Counsel indicated he had discussed the document with appellant, and had tried to explain why the issues were not relevant or were distinguishable from appellant's case.

In light of the issues appellant raised, the court asked what the defense's position was on the petition. Defense counsel then argued that because there were two actors involved in the killing (appellant and Thomas), appellant's petition statements that he was not the killer and had no intent to kill should be credited as true at the prima facie stage, and an evidentiary hearing was required. The court then addressed appellant specifically: "Mr. Brown, anything else you think [defense counsel] should raise? You want to speak with [defense counsel] some more?" Defense counsel responded the matter was "Submitted …." After the prosecutor made a brief argument, the court denied the petition. The court reasoned that appellant and Thomas were found guilty of first

degree premeditated murder with malice aforethought, and that appellant had personally and intentionally discharged a firearm which proximately caused death to the victim. The court explained that neither the natural and probable consequences doctrine nor felony murder were pursued as theories of the case, nor was the jury instructed on either theory. Rather, appellant was charged and found by the jury to have committed premeditated first degree murder; no malice was imputed to him. As appellant was convicted under a still valid theory of murder under Senate Bill 1437, appellant was ineligible for section 1172.6 relief as a matter of law.

B. No Error

"Under the Sixth and Fourteenth Amendments, a criminal defendant has two mutually exclusive rights at all critical stages of a criminal prosecution—the right to counsel and the right to self-representation." (*People v. Fedalizo* (2016) 246 Cal.App.4th 98, 103–104, citing *Faretta v. California* (1975) 422 U.S. 806, 819 ["The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants the accused personally the right to make his defense."] & *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1001.) "'The right to counsel is self-executing; the defendant need make no request for counsel in order to be entitled to legal representation'" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1069), but the right to self-representation must be "clearly, timely, and effectively invoked. Effective invocation of the right to self-representation requires a defendant to waive the right to counsel knowingly, intelligently, and voluntarily." (*Fedalizo, supra*, at p. 104, citing *Faretta, supra*, at p. 835; accord, *People v. Doolin* (2009) 45 Cal.4th 390, 453 [whether timely or untimely, a request for self-representation must be unequivocal].)

However, "[t]here is no unconditional state or federal constitutional right to counsel to pursue collateral relief from a judgment of conviction" (*Lewis, supra*, 11 Cal.5th at p. 972), and "a petitioner is not constitutionally entitled to counsel at the outset of the subdivision (c) [prima facie] stage of the section [1172.6] petitioning process" (*id.*

at p. 973). Rather, the right to counsel (and the right to refuse such counsel) at the section 1172.6 prima facie stage is statutory only. (*Lewis, supra*, at p. 973; see *People v. Williams* (2003) 110 Cal.App.4th 1577, 1591 & fn. 6 [where right to counsel is purely statutory in mentally disordered offender (MDO) proceeding, the right to refuse such counsel is not of constitutional origin].)[4]

The parties agree there is no federal constitutional right to self-representation at the section 1172.6 prima facie stage. Even assuming, without deciding, that there is an implied right to self-representation in this context because there is a statutory right to counsel at the prima facie stage (*Id.*, subd. (b)(3); *Lewis, supra*, 11 Cal.5th at p. 973 [right to counsel at prima facie stage is purely statutory]), we are unable to conclude the trial court committed any error. (See *Williams, supra*, 110 Cal.App.4th at p. 1591 [where "statute expressly gives the right to counsel to defendants in MDO proceedings[,] … surely they have by implication the right to refuse appointed counsel and represent themselves"].)

Where no federal constitutional right of self-representation is implicated, the decision to grant or deny a request for self-representation is committed to the trial court's sound discretion. (*People v. Williams, supra*, 110 Cal.App.4th at p. 1592.) Here, the trial

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4 Appellant contends there is a state *constitutional* right to self-representation at the prima facie stage of the section 1172.6 process while the Attorney General disagrees, claiming any right of self-representation in section 1172.6 proceedings is statutory only. In relevant part, Article I, section 15, of the California Constitution provides as follows: "The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant.…" Appellant does not explain how this state constitutional provision affords him a right to self-representation in a collateral proceeding such as section 1172.6, especially in light of *Lewis*'s recognition that "[t]here is no unconditional state or federal constitutional right to counsel to pursue collateral relief from a judgment of conviction." (*Lewis, supra*, 11 Cal.5th at p. 972.) Accordingly, we do not reach that issue. (See *People v. Ashford University, LLC* (2024) 100 Cal.App.5th 485, 513–514 [appellate court not required to examine undeveloped claims or make arguments for the parties].)

court properly exercised its discretion. Considering the full context of the hearing and appellant's statements, there is no clear indication appellant actually wished to proceed without the benefit of counsel. (See *People v. Marshall* (1997) 15 Cal.4th 1, 22 [invoking constitutional right to self-representation must be unequivocal to "protect the courts against clever defendants who attempt to build reversible error into the record by making an equivocal request for self-representation"].) Appellant requested counsel in his initial petition, and the pro se document he had submitted a few weeks before the hearing did not contain any request for self-representation, and, as such, it was properly disregarded by the court. (*People v. Clark* (1992) 3 Cal.4th 41, 173 [except for clear pro se motions regarding representation, including requests for new counsel, any pro se documents by represented parties will be returned unfiled], disapproved on other grounds in *People v. Edwards* (2013) 57 Cal.4th 658, 704–705; accord, *People v. Carter* (2024) 15 Cal.5th 1092, 1103.)

The court's exchange with defense counsel examined the basis for counsel's statement that appellant may wish to have new counsel, and revealed appellant's desire to raise habeas issues his counsel did not believe were relevant. Nothing indicated appellant wished to represent himself going forward, especially as the issues appellant wanted his counsel to address were presented in general terms to the court. When the court asked if there was anything further appellant wanted to add after defense counsel made substantive arguments about the petition, appellant did not seek to relieve his attorney or represent himself. Finally, when appellant personally addressed the court at the end of the hearing, he never indicated his desire for the appointment of new counsel or that he had wanted to act as his own counsel. On this record, we are unable to conclude appellant made a clear request for self-representation that the court failed to address.[5]

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[5] No due process right to counsel or self-representation exists at the prima facie stage because appellant had not yet established a prima facie case for postconviction relief. (See *Lewis, supra,* 11 Cal.5th at p. 973 [considering due process right to counsel].)

C. No Prejudice

Even if we assume, however, the trial court erred as to appellant's purported request for self-representation, appellant has not established any prejudice.

Although the *Watson* harmless error test generally applies when the error is purely one of state law (*Lewis, supra,* 11 Cal.5th at p. 973), appellant maintains denying his request for self-representation was structural error and dictates automatic reversal of the judgment. Appellant relies on *People v. Blackburn* (2015) 61 Cal.4th 1113 (*Blackburn*), where the court held the failure to obtain a personal waiver of the right to a jury trial to extend a MDO commitment was a structural error that required automatic reversal. The court explained, "[i]n an MDO commitment proceeding, as in a criminal trial, the 'jury guarantee' is a basic protection 'whose precise effects are unmeasurable' and whose denial 'def[ies] analysis by "harmless-error" standards.' [Citation.] Accordingly, the total deprivation of a jury trial without a valid waiver in an MDO commitment proceeding requires automatic reversal." (*Id.* at p. 1135.)

Appellant also cites *People v. Vigil* (2008) 169 Cal.App.4th 8 (*Vigil*), where the defendant's trial attorney resigned from the state bar in the middle of the defendant's criminal trial. (*Id.* at p. 12.) The appellate court held the California Constitution guarantees a criminal defendant the right to representation by a fully licensed member of the state bar during his entire trial. (*Id.* at pp. 15–16.) From the point of the attorney's resignation from the state bar, he was rendered effectively absent from trial for state constitutional purposes. (*Id.* at p. 16.) Because the attorney was absent during a critical stage of the proceeding, and because an essential element of the state constitutional right to counsel is counsel's status as a member of the state bar (*In re Johnson* (1992) 1 Cal.4th 689, 701), automatic reversal was required (*Vigil, supra,* at p. 16).

In this context, we are unpersuaded that a violation of a right of self-representation amounts to a structural error. In *Lewis*, our high court held the failure to appoint counsel at the prima facie stage of the section 1172.6 process is not a structural error, despite the

petitioner's reliance on *People v. Lightsey* (2012) 54 Cal.4th 668 (*Lightsey*). (*Lewis, supra,* 11 Cal.5th at p. 974.) In finding *Lightsey* insufficiently analogous, *Lewis* explained that *Lightsey* involved a failure to appoint counsel to represent a defendant during a mental competency proceeding in violation of section 1368. (*Lewis, supra,* at p. 974.) The *Lightsey* court concluded the error was structural because there was no "'reasoned manner'" in which to assess the effect the absence of counsel had on the trial court's finding of competency because there was a "'lack of true adversarial testing [which] denied [the] defendant the basic procedure by which his competence should have been determined'"; moreover, permitting an individual whose mental competence is contested to self-represent to argue his or her competence causes "'a breakdown … in the process of meaningful adversarial testing central to our justice system.'" (*Lewis, supra,* at p. 974, quoting *Lightsey, supra,* at pp. 701, 696–697.)

Lewis explained that no similar analogy to the total deprivation of the right of counsel at issue in *Lightsey* could be made with respect to a petitioner's deprivation of counsel at the prima facie stage of a section 1172.6 proceeding. "Unlike the deprivation of counsel at a competency hearing, where a defendant's very ability to understand the nature and purpose of the criminal proceedings against him is in dispute [citation], the prima facie stage under subdivision (c) [of section 1172.6] is not similarly adversarial." (*Lewis, supra,* 11 Cal.5th at p. 974.) The only question before the trial court is whether the petitioner can make a prima facie showing for relief, which involves crediting a petitioner's allegations as true and making no credibility determinations or engaging in any factfinding. (*Ibid.*)

Similar to *Lightsey,* the court in *Blackburn* explained the failure to obtain a valid jury trial waiver in an MDO proceeding defied ordinary harmless error analysis because it required speculation about whether a defendant would have chosen a jury trial had he or she been in a position to make a personal choice and whether that would have had any effect on the outcome of the trial. (*Blackburn, supra,* 61 Cal.4th at p. 1134.) Because the

jury trial guarantee is a basic protection "'whose precise effects are unmeasurable,'" the denial defied analysis by harmless error standards. (*Id.* at p. 1135.)

Unlike *Lightsey* or *Blackburn*, any error in denying a motion for self-representation does not defy harmless error analysis. As explained in *Lewis*, the section 1172.6 prima facie stage is limited as the petitioner's allegations are to be accepted as true, and the court makes no credibility findings or engages in factfinding. (*Lewis, supra*, 11 Cal.5th at p. 974.) The effect of an error in this regard is not impossible to assess nor is it speculative. (*Ibid.*) The limited nature of the prima facie inquiry is conducive to a *Watson* error analysis: whether there is a reasonable possibility that, had the petitioner been permitted to self-represent, the petition would not have been summarily denied without an evidentiary hearing. (*Ibid.*) *Vigil* also provides no comparable analogue because that case involved a direct violation of the California Constitution's guarantee of counsel at a criminal trial—an essential and basic protection the precise effects of which are unmeasurable. Consistent with *Lewis*, any violation of the right to self-representation at section 1172.6's prima facie stage is conducive to harmless error analysis. (*Lewis, supra*, at p. 974.)

In this case, no prejudice has been demonstrated. During appellant's original trial, the prosecutor did not argue, nor was the jury instructed on, any theory of murder invalidated by Senate Bill 1437 or other theory of imputed malice. To find appellant guilty of first degree murder, the jury was required under CALCRIM No. 521 to find "[t]he defendant" acted with an "inten[t] to kill." In finding appellant guilty of first degree murder, the jury necessarily found appellant *personally* acted with express malice. Because no invalid theory of imputed malice was presented to the jury, the jury's guilty finding on first degree premeditated murder necessarily supports a murder conviction under current law. (*People v. Cortes* (2022) 75 Cal.App.5th 198, 205 [the petitioner is ineligible for § 1172.6 relief as a matter of law if the jury instructions show that jurors were not instructed on any theory of murder liability that allowed malice to be imputed];

People v. Daniel (2020) 57 Cal.App.5th 666, 678 [absence of jury instructions based on any theory of liability affected by Sen. Bill 1437 renders the petitioner ineligible for relief as a matter of law]; cf. *Curiel, supra*, 15 Cal.5th at p. 471 [given instruction on natural and probable consequences doctrine, jury finding of intent to kill insufficient to conclusively establish the petitioner was liable for murder under current law].)

Appellant's argument there was exculpatory evidence his trial counsel failed to present to the jury does not obviate the jury instructions and its verdict findings. (*People v. Daniel*, *supra*, 57 Cal.App.5th at p. 678 [§ 1172.6 does not authorize "a defendant to present new evidence to undermine a jury's finding of guilt under a particular theory of murder, effectively retrying the case"].) As a result, even if appellant had been permitted to represent himself at the prima facie stage, he could not have escaped the findings made by the jury at his trial, extinguishing any reasonable possibility the result would have been more favorable to him absent the purported error. Thus, any presumed error in failing to allow appellant to represent himself was harmless.

DISPOSITION

The judgment is affirmed.

MEEHAN, Acting P. J.

WE CONCUR:

SNAUFFER, J.

DESANTOS, J.