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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,

B337846

Plaintiff and Respondent,

(Los Angeles County  
Super. Ct. No. GA101244)

v.

DERION DAVON LEE,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Charlaine F. Olmedo, Judge. Affirmed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, Colleen M. Tiedemann, Stacy S. Schwartz, Deputy Attorneys General, for Plaintiff and Respondent.

## MEMORANDUM OPINION<sup>1</sup>

In 2018 a jury convicted Darion Davon Lee and several codefendants of crimes relating to shootings in 2016 and 2017. Lee was convicted of conspiracy to commit murder (§ 182, subd. (a)(1)); three counts of first degree murder (§ 187, subd. (a)); two counts of attempted willful, deliberate, and premeditated murder (§§ 664, 187, subd. (a)); and shooting at an inhabited dwelling (§ 246). (*People v. Lee* (2022) 81 Cal.App.5th 232, 235-236.) The jury found true several special circumstance allegations. (*Ibid.*) The convictions were affirmed on appeal, but this court vacated some of the special circumstance findings. (*Id.* at p. 246.) The People did not retry Lee regarding the special circumstances.

In November 2023, Lee filed a form petition for resentencing under section 1172.6. The court appointed counsel for Lee. The People opposed the petition, asserting that Lee was ineligible for resentencing because his jury had not been instructed on the felony-murder doctrine, the natural and probable consequences doctrine, or any theory under which malice could be imputed to Lee. In his reply, Lee argued that he should get an evidentiary hearing. The trial court denied the petition on the basis that Lee failed to make a *prima facie* showing of eligibility for relief. Lee timely appealed.

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<sup>1</sup> We resolve this case by memorandum opinion. (Cal. Stds. Jud. Admin., § 8.1.) We do not recite the factual and procedural background because our opinion is unpublished and the parties are familiar with the facts of the case and its procedural history. (*People v. Garcia* (2002) 97 Cal.App.4th 847, 851 [unpublished opinion merely reviewing correctness of trial court's decision "does not merit extensive factual or legal statement"].) Undesignated statutory references are to the Penal Code.

On appeal, Lee asserts a single-sentence argument that “the trial court engage [sic] in factfinding involving the weighing of evidence or the exercise of discretion which was not authorized at this stage of the proceedings.” (See *People v. Lewis* (2021) 11 Cal.5th 952, 972 [in “assessing whether a petitioner has made a prima facie case for relief” under section 1172.6, subdivision (c), “a trial court should not engage in ‘factfinding involving the weighing of evidence or the exercise of discretion’”].)

The record does not support Lee’s argument. At the hearing on the petition, the court noted that it had reviewed the record of conviction, including the information and jury instructions, and stated, “I am not sitting here as a fact finder for purposes of the prime facie hearing.” The court observed that the People’s theory at trial was that Lee was a direct aider and abettor, except for one of the murder counts, for which Lee was the actual shooter. The court also noted that the jury was not instructed on felony murder or the natural and probable consequences doctrine. The court further observed that Lee was convicted of conspiracy to commit murder, which required the jury to find that Lee had an express intent to kill. The court concluded, “[B]ased upon the cold record that the court has reviewed, 1172.6 is inapplicable here and defendant is not entitled to the relief requested as a matter of law and he has failed to meet his [burden] of establishing a prima facie case and the petition is denied.”

The court specifically stated twice that it was *not* acting as a factfinder. Moreover, the record does not suggest that the court engaged in any factfinding or weighing of evidence, or that the court exercised any discretion in reaching its conclusion. Rather, the court made clear that the record of conviction demonstrated that Lee was not eligible for relief as a matter of law. Lee’s

argument is not supported by the record, so he has failed to demonstrate error. (See, e.g., *People v. Gonzalez* (2021) 12 Cal.5th 367, 410 [appellant has the burden to affirmatively demonstrate error].)

#### **DISPOSITION**

The order denying Lee's petition for resentencing is affirmed.

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COLLINS, J.

We concur:

ZUKIN, P. J.

MORI, J.