

Filed 1/2/26 P. v. Moore CA2/5

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

THE PEOPLE,

B344758

Plaintiff and Respondent,

(Los Angeles County  
Super. Ct. No.  
24CJHC00156)

v.

WILLIAM MOORE, JR.,

Defendant and Petitioner.

PETITION for writ of mandate from an order of the Superior Court of the County of Los Angeles, William C. Ryan, Judge. Denied.

California Appellate Project, Jennifer Peabody and Jennifer Hanson, under appointment by the Court of Appeal, for Defendant and Petitioner.

No appearance for Respondent.

## **I. INTRODUCTION**

Defendant William Moore, Jr., purports to appeal from the trial court's denial of his motion for an order under Penal Code section 3051<sup>1</sup> compelling the Board of Parole Hearings (Board) to hold a youth offender parole hearing. We treat the appeal as a petition for a writ of mandate and deny it.

## **II. BACKGROUND**

On October 10, 1996, a jury found defendant guilty of first degree murder in violation of section 187, subdivision (a) and first degree robbery in violation of section 211. The jury also found true the allegations that defendant committed the murder while engaged in the commission of a robbery within the meaning of section 190.2, subdivision (a)(17), and that defendant personally used a firearm in the commission of both those offenses, within the meaning of section 12022.5, subdivision (a). The trial court sentenced defendant, who was 21 at the time he committed his crimes, to life without the possibility of parole (LWOP) pursuant to section 190.2, subdivision (a)(17), plus four years pursuant to section 12022.5, subdivision (a).

On June 22, 1998, a prior panel of this Division affirmed defendant's conviction in an unpublished opinion. (*People v. Moore* (June 22, 1998, B114225) [nonpub. opn.].)

On September 16, 2021, we affirmed the trial court's denial of a petition for resentencing pursuant to section 1172.6 on the grounds that defendant, as he conceded in the trial court, was

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<sup>1</sup> All further statutory references are to the Penal Code.

convicted as the actual killer. (*People v. Moore* (Sept. 16, 2021, B311007) [nonpub. opn.].)

On August 7, 2024, the trial court conducted a hearing pursuant to *People v. Franklin* (2016) 63 Cal.4th 261, accepted defendant's *Franklin* packet, and ordered the clerk to forward it to the Department of Corrections and Rehabilitation (CDCR).

On December 12, 2024, defendant filed a motion seeking an order compelling the Board to hold a youth offender parole hearing pursuant to section 3051, citing *People v. Briscoe* (2024) 105 Cal.App.5th 479, 494–495 (*Briscoe*) and *People v. Andreasen* (2013) 214 Cal.App.4th 70, 81.

On February 21, 2025, the trial court denied the motion, explaining that “[d]efendant was convicted as the actual killer and the jury found that [he] personally used a firearm during the commission of both the robbery and the murder. Accordingly, *Briscoe*'s carve-out for some LWOP youth offenders does not apply to [d]efendant.”

On March 17, 2025, defendant filed a notice of appeal from the order denying his motion.

Following appointment of counsel, defendant's attorney filed a brief pursuant to *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*) advising that she had reviewed the entire record and found no arguable issues on appeal. She requested that we follow the procedures outlined in *Delgadillo* and permit defendant to file supplemental briefing on any issues he wanted this court to consider. In the statement of appealability, counsel asserted that, “[a]lthough motions are not usually appealable, in the interests of justice and judicial economy, courts can treat an appeal as an application for writ of mandate and dispose of it on its merits. (*People v. Payne* (1988) 202 Cal.App.3d 933, 937; see

also *People v. Picklesimer* (2010) 48 Cal.4th 330, 335 [‘A court may in its discretion treat such a postjudgment motion as a mislabeled petition for writ of mandate’].) This Court should determine appealability.”

On August 14, 2025, we sent defendant notice that his appointed counsel had filed a brief that raised no issues. We directed his counsel to send him the record, and advised defendant that he had 30 days within which to file a supplemental letter brief with this court stating any grounds for an appeal, or contentions, or arguments that he wished this court to consider and that, if no supplemental brief or letter was timely filed, the court may dismiss the appeal as abandoned.

On August 15, 2025, defendant filed a supplemental letter brief arguing that a determination of his culpability “should not be based solely upon the Abstract of Judgment . . . or on the jury findings in isolation.” Citing *Briscoe, supra*, 105 Cal.App.5th 479, defendant contends he was “not the actual killer” and is therefore entitled to relief.

### III. DISCUSSION

As noted, in her brief, appointed counsel concedes that “motions are not usually appealable,” but requests that we treat this appeal as a petition for a preemptory writ of mandate and dispose of it on its merits. We grant counsel’s request to review the matter under our writ jurisdiction, following the procedure set forth in *Delgadillo, supra*, 14 Cal.5th at page 223.

Defendant’s petition was filed under section 3051, which “provides an opportunity for release (via youth offender parole hearings) to most persons convicted of crimes committed before

the age of 26 in their 15th, 20th, or 25th year of incarceration, depending on the sentence imposed for their “[c]ontrolling offense.”” (*People v. Sands* (2021) 70 Cal.App.5th 193, 198.) Here, defendant, who was over 18 at the time of his crimes, and was sentenced to LWOP, is ineligible for a youth offender parole hearing. (§ 3051, subd. (h).) Moreover, our Supreme Court has found that section 3051, subdivision (h)’s exclusion of offenders who are serving LWOP sentences for a crime committed after the age of 18 does not violate equal protection principles. (*People v. Hardin* (2024) 15 Cal.5th 834, 859.)

Defendant contends that he is nonetheless entitled to a youth offender parole hearing under *Briscoe, supra*, 105 Cal.App.5th 479. In that case, the defendant was sentenced to LWOP for his participation in a murder when he was 21 years old based on a special circumstance finding under section 190.2, subdivision (d), which applied to *nonkiller* participants in specified felony murder cases during which a murder occurred. (*Id.* at p. 485.) The court in *Briscoe* concluded that “[a]s applied to youth offenders sentenced under section 190.2, subdivision (d) for murder during a robbery or burglary, [section 3051] violates equal protection.” (*Id.* at p. 494.)

Even assuming, for purposes of this appeal, that we agree with the holding in *Briscoe, supra*, 105 Cal.App.5th 479, it has no application here because defendant was not sentenced to LWOP based on a special circumstance finding under section 190.2, subdivision (d). Instead, defendant was sentenced to LWOP pursuant to section 190.2, subdivision (a)(17), which provides for a penalty of death or LWOP if the murder “was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight

after committing, or attempting to commit" specified felonies, including robbery. Unlike section 190.2, subdivision (d), which only applies to nonkillers, subdivision (a)(17) applies to actual killers and nonkillers who commit murder while intending to commit a felony such as robbery. As we found in our unpublished opinion in defendant's appeal from the denial of his section 1172.6 motion, defendant was convicted of murder as the actual killer and thus is not entitled to relief under *Briscoe, supra*, 105 Cal.App.5th 479.

#### **IV. DISPOSITION**

Defendant's petition for writ of mandate is denied.

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KIM (D.), J.

I concur:

MOOR, J.

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BAKER, Acting P. J., Dissenting

I would not treat the appeal as a petition for a writ of mandate and I would dismiss the appeal as taken from a nonappealable order.

BAKER, Acting P. J.