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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ALEX NUNEZ HLUZ, Defendant and Appellant.	B340934 (Los Angeles County Super. Ct. No. PA033836)

APPEAL from an order of the Superior Court of Los Angeles County, Ronald S. Coen, Judge. Affirmed.

Victor J. Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Charles C. Ragland, Chief Assistant Attorney General, Susan Sullivan Pithey, Senior Assistant Attorney General, Scott A. Taryle and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Alex Nunez Hluz appeals from an order denying his petition for resentencing pursuant to Penal Code section 1172.6.[1] Defendant contends that the trial court erred by finding he did not make a prima facie showing of eligibility for relief. We affirm.

II. BACKGROUND

A. *Underlying Conviction*

In June 2000, the Los Angeles County District Attorney charged defendant by an amended information with: the murder of Daniel Vilchis (§ 187, subd. (a)); the attempted willful, deliberate, and premeditated murder of Cesar Soria (§§ 664, 187, subd. (a)); and two counts of second degree robbery (§ 211). The information further alleged that defendant committed the murder during the commission of a robbery (§ 190.2, subd. (a)(17)) and charged firearm and gang enhancements, including that a principal personally and intentionally discharged a firearm which caused great bodily injury and death to Vilchis (§ 12022.53, subds. (b) and (e)(1)).

In 2000, the parties proceeded to a jury trial. As relevant here, the trial court instructed the jury regarding special circumstances robbery with CALJIC No. 8.80.1 as follows: "If you

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[1] Further statutory references are to the Penal Code. The Legislature renumbered section 1170.95 as section 1172.6 effective June 30, 2022. (Stats. 2022, ch. 58, § 10.) For clarity, we will refer to section 1172.6 throughout this opinion.

find the defendant in this case guilty of murder of the first degree, you must then determine if the following special circumstance is true or not true: murder during the commission of robbery.

"The People have the burden of proving the truth of a special circumstance. If you have a reasonable doubt as to whether a special circumstance is true, you must find it to be not true.

"If you are satisfied beyond a reasonable doubt that the defendant actually killed a human being, you need not find that the defendant intended to kill in order to find the special circumstance to be true.

"If you find that a defendant was not the actual killer of a human being, or if you are unable to decide whether the defendant was the actual killer or an aider and abettor, you cannot find the special circumstance to be true unless you are satisfied beyond a reasonable doubt that such defendant with the intent to kill aided, abetted, counseled, commanded, induced, solicited, requested, or assisted any actor in the commission of the murder in the first degree." (Brackets omitted.)

The jury found defendant guilty of the first degree murder of Vilchis and the two robbery counts. The jury found true the special circumstance allegation that defendant was engaged in the commission of a robbery when the murder was committed (§ 190.2, subd. (a)(17)), and also found true the firearm and gang enhancement allegations (§§ 186.22, subd. (b)(1), 12022.53, subds. (b), (c), (d), and (e)(1)). The jury was unable to reach a verdict on the attempted murder count, and the trial court declared a mistrial on that count. The prosecutor subsequently dismissed the count.

On October 2, 2000, the trial court sentenced defendant to life without the possibility of parole. We affirmed the conviction on appeal. (*People v. Hluz* (July 12, 2001, B145067) [nonpub. opn.].)

B. *Section 1172.6 Petition*

On August 19, 2022, defendant filed a petition pursuant to section 1172.6. Defendant declared among other things that an information was filed against him that allowed the prosecution to proceed under a theory of felony murder; that he was convicted of murder; and that he could not be convicted of murder based on changes made to sections 188 and 189, effective January 1, 2019.

The trial court appointed counsel for defendant and ordered the People to file a response.

In opposition, the People argued that defendant could not make a prima facie showing of eligibility for relief because the record of conviction demonstrated that the jury found he was the actual killer or, with the intent to kill, aided and abetted the actual killer. The People submitted in support the jury's true finding on the robbery murder special circumstance, the jury instructions, the verdict forms, and our prior opinion.

On September 13, 2024, the trial court held a hearing on the petition. The court denied the motion, finding defendant failed to demonstrate a prima facie showing that he was eligible for relief. Defendant timely appealed.

III. DISCUSSION

A. *Section 1172.6*

"Senate Bill [No.] 1437 altered the substantive law of murder in two areas. First, with certain exceptions, it narrowed the application of the felony-murder rule by adding section 189, subdivision (e). . . . Under that provision, 'A participant in the perpetration or attempted perpetration of a [specified felony] in which a death occurs is liable for murder only if one of the following is proven: [¶] (1) The person was the actual killer. [¶] (2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree. [¶] (3) The person was a major participant in the underlying felony and acted with reckless indifference to human life, as described in subdivision (d) of Section 190.2.' (§ 189, subd. (e).) [¶] . . . [¶]

"Senate Bill [No.] 1437 also enacted former section 1170.95 [renumbered as section 1172.6], which created a procedural mechanism 'for those convicted of felony murder . . . to seek relief' where the . . . substantive changes described above affect a defendant's conviction. . . . [¶] Under section 1172.6, 'A person convicted of felony murder . . . may file a petition with the court that sentenced the petitioner to have the petitioner's murder . . . conviction vacated and to be resentenced on any remaining counts . . . .' (§ 1172.6, subd. (a).)" (*People v. Curiel* (2023) 15 Cal.5th 433, 448–451.)

"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[s] 188 or 189 made effective January 1, 2019, unless the allegation is refuted by the record. [Citation.]" (*People v. Curiel*, *supra*, 15 Cal.5th at p. 463.) "After determining the facial validity of a resentencing petition and before ordering an evidentiary hearing, a trial court may properly, at the prima facie stage, reference the record of conviction to ""refut[e]"" ([*People v.*]*Lewis* [(2021)] 11 Cal.5th [952,] 971) conclusory allegations in furtherance of its statutorily required screening function at that juncture of a section 1172.6 proceeding." (*People v. Patton* (2025) 17 Cal.5th 549, 569.)

B. *Analysis*

Defendant contends the trial court erred in denying his petition at the prima facie stage. According to defendant, the jury instructions delivered at trial do not demonstrate that he was ineligible for relief as a matter of law. Specifically, he contends that the findings required by CALJIC No. 8.80.1 "do not satisfy all of the requirements for . . . the theory of direct aiding and abetting . . . ." Although he concedes that CALJIC No. 8.80.1 included instructions that required the jury to find the "necessary mental state . . . of *both* 'intent and knowledge,'" defendant contends that because it used the disjunctive when it required the jury to find that defendant "aided, abetted, counseled, commanded, induced, solicited requested, or assisted" the commission of first degree murder, "the jury could have convicted . . . simply because, acting with the intent to kill, he 'assisted' another person in committing first degree murder." (Brackets omitted.)

Section 189, subdivision (e) provides in pertinent part: "A participant in the perpetration . . . of a felony listed in subdivision (a) in which a death occurs is liable for murder only if one of the following is proven: [¶] (1) The person was the actual killer. [¶] (2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree." Section 189, subdivision (e) is thus nearly identical, including in its use of the disjunctive, with the instruction provided in CALJIC No. 8.80.1. (See *People v. Vang* (2022) 82 Cal.App.5th 64, 83 ["By adding subdivision (e) to section 189, Senate Bill [No.] 1437 made the crime of felony murder subject to the same elements of proof required for a felony-murder special-circumstance finding under section 190.2"].) The jury instructions, together with the jury's true special circumstances finding, demonstrate that the jury necessarily found that either: (1) defendant was the actual killer; or (2) defendant, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested or assisted the actual killer in the first degree murder. Defendant therefore could still be convicted of murder under current law. (§ 189, subds. (a), (e)(1), (2).)

IV. DISPOSITION

The order denying the section 1172.6 petition is affirmed.

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KIM (D.), J.

We concur:

HOFFSTADT, P. J.

MOOR, J.