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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re

CHAD WILLIAMS JIMENEZ

on

Habeas Corpus.

B346572

(Los Angeles County
Super. Ct. No. BA446047)

ORIGINAL PROCEEDING; petition for habeas corpus.
Frederick N. Wapner, Judge. Petition granted.

Marilee Marshall for Petitioner.

Rob Bonta, Attorney General, Lance E. Winters, Chief
Assistant Attorney General, Susan Sullivan Pithey, Senior
Assistant Attorney General, Jason Tran, Supervising Deputy
Attorney General, and Kristen J. Inberg, Deputy Attorney
General, for Respondent.

A jury found petitioner Chad Williams Jimenez guilty of two counts of assault with a firearm (Pen. Code, § 245, subd. (b))¹, possession of a firearm by a felon (§ 29800, subd. (a)(1)), and attempted second degree robbery (§§ 211,664). The jury found true the allegations that petitioner committed the offenses for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)–(C)), and that he personally used a firearm in commission of the offenses (§§ 12022.5, subds. (a) & (d), 12022.53, subd. (b)). In a bifurcated proceeding, the trial court found true the allegation that petitioner had suffered a prior strike conviction. (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)), and a prior serious felony conviction within the meaning of section 667, subdivision (a)(1).

On appeal, this court remanded to allow the trial court to exercise its discretion to strike the five-year enhancement imposed under section 667, subdivision (a)(1), but otherwise affirmed. (*People v. Jimenez* (Jun. 4, 2019, B289894) [nonpub. opn.].)²

Petitioner now contends that he is entitled to relief pursuant to Assembly Bill No. 333 (2021–2022 Reg. Sess.) (Assembly Bill 333). We agree and grant the petition for a writ of habeas corpus.

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

² The trial court struck the five-year enhancement imposed under section 667, subdivision (a)(1), pursuant to Senate Bill 1393 upon remand. This court affirmed. (*People v. Jimenez* (Jun. 22, 2023, B321784) [nonpub. opn.].)

PROCEDURAL HISTORY

In 2020, petitioner sought habeas relief in this court, alleging his trial counsel provided ineffective assistance and prosecutorial misconduct. The petition was denied. (*In re Jimenez* (Sept. 25, 2020, B307306) [nonpub. ord.].)

In 2024, petitioner filed a petition for a writ of habeas corpus in the California Supreme Court. The petition argued again that trial counsel was ineffective, and also that resentencing counsel and appellate counsel were ineffective for failing to raise the issue of his entitlement to relief pursuant to Assembly Bill 333. The California Supreme Court ordered the People to file an informal response. The informal response was filed on February 27, 2025, and petitioner filed a reply on April 17, 2025. On May 28, 2025, the California Supreme Court issued an order directing the Department of Corrections and Rehabilitation to show cause, returnable to this court, “why relief should not be granted on the ground petitioner’s enhancements for committing the offenses for the benefit of a criminal street gang . . . must be vacated pursuant to Assembly Bill No. 333.” The People filed a return on June 20, 2025.

This court issued an order for the appointment of counsel for petitioner and allowed for the filing of a supplemental petition for writ of habeas corpus, which counsel filed on August 13, 2025. This court’s order also set a schedule for further briefing; however, the People did not file a return to the supplemental petition. Counsel for petitioner filed a traverse on September 23, 2025.

DISCUSSION

Section 186.22 provides for enhanced punishment when the defendant is convicted of an enumerated felony committed “for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members.” (§ 186.22, subd. (b)(1).) Assembly Bill 333 made substantive changes to section 186.22. Prior to the amendments, to prove that a group was a “criminal street gang” the prosecution was required to show: “(1) the group [was] an ongoing association of three or more persons sharing a common name, identifying sign, or symbol; (2) one of the group’s primary activities [was] the commission of one or more statutorily enumerated criminal offenses; and (3) the group’s members ... have engaged in, a pattern of criminal gang activity.” (*People v. Ochoa* (2017) 7 Cal.App.5th 575, 581; former § 186.22, subd. (f).) Former section 186.22, subdivision (e), provided that a “‘pattern of criminal gang activity’ means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more [enumerated] offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons....” “Thus, ‘the requisite “pattern of criminal gang activity” [[could] be proved] by evidence of “two or more” predicate offenses committed “on separate occasions” or by evidence of such offenses committed “by two or more persons” on the same occasion.’ [Citation.] [A] predicate offense [could] be established by evidence of the

charged offense.’ [Citation.]” (*Meniffee v. Superior Court* (2020) 57 Cal.App.5th 343, 362.)

Assembly Bill 333 amended section 186.22, subdivision (f) to redefine the term “criminal street gang” to mean “an ongoing, organized association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in subdivision (e), having a common name or common identifying sign or symbol, and whose members collectively engage in, or have engaged in, a pattern of criminal gang activity.”

Assembly Bill 333 also amended the statute to require that to establish a “pattern of criminal gang activity”: (1) the last of the predicate offenses used to demonstrate a pattern of criminal activity must have occurred within three years of the date the current offense is alleged to have been committed; (2) the predicate offenses must have commonly benefitted a criminal street gang; and (3) the common benefit of the predicate offenses must be more than reputational. Certain crimes that previously qualified as predicate offenses may no longer be used to demonstrate a pattern of criminal activity . (§ 186.22, subd. (e)(1).) The prosecution is now prohibited from using the currently charged offense to establish a pattern of criminal activity. (§ 186.22, subd. (e)(2).)

Finally, subdivision (g) of section 186.22 defines “to benefit, promote, further, or assist” a criminal street gang as “to provide a common benefit to members of a gang where the common benefit is more than reputational,” which may include “financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.” Previously, proof of a reputational benefit

to the gang would suffice. (*People v. Ramirez* (2016) 244 Cal.App.4th 800, 819.)

These changes apply retroactively to all cases not yet final on the effective date of Assembly Bill 333, January 1, 2022. (*People v. Tran* (2022) 13 Cal.5th 1169, 1206–1207 (*Tran*).) Recently, the California Supreme Court in *People v. Lopez* (2025) 17 Cal.5th 388 clarified that a defendant would be entitled to relief under Assembly Bill 333 if an appellate court affirmed the judgment, but sentencing issues were pending upon remand as of January 1, 2022. (*Id.* at p. 400.) Petitioner was resentenced on May 16, 2022, after a remand from this court.

Petitioner asserts that the evidence presented at his trial was insufficient to support the gang enhancement under the ameliorative changes made pursuant to Assembly Bill 333. Specifically, petitioner claims the evidence fell short of what is required to prove the crimes benefited the gang under section 186.22, subdivision (g).³

Los Angeles Police Department Officer Jose Tejada, who works in a specialized unit doing gang enforcement detail that

³ The People's return does not address the issue of whether the evidence at trial shows a benefit to the gang that is not merely reputational. Rather, their return to the original habeas petition rests on the argument that neither Jimenez's trial nor appellate counsel was ineffective for failing to raise the issue. We understand the directive of our Supreme Court to require the parties and this court to address petitioner's entitlement to relief under Assembly Bill 333, irrespective of any claim of ineffective assistance. Further, we have permitted the filing of a supplemental petition that directly raises petitioner's entitlement to Assembly Bill 333 relief, and the People have not responded to it. As such, we reach the merits of that issue without discussing petitioner's claims of ineffective assistance of counsel.

included monitoring the Cypress Park Gang, testified at trial. Officer Tejeda stated that petitioner was a self-identified member of the Cypress Park Gang. He also testified about the nature of gangs. He stated that gangs want fear and respect from the community. It is expected that gang members will “put in work,” meaning committing crimes such as robbery and assault, in order to raise their rank within the gang. Committing the crimes earns them respect from fellow gang members as well as rivals. The crimes also serve to create fear and intimidation within the community. Officer Tejeda also testified that gang members asking, “Where are you from?” (which petitioner did in this case) is an attempt to find out whether the person is a rival gang member, and “a lot of times an assault will shortly follow.”

At the trial of Jimenez, the jury was presented with evidence that the “benefit” to the Cypress Park Gang was reputational, and the prosecution did not present evidence of, or argue that there was any other benefit to the gang. Even assuming one could argue that the evidence could be characterized as showing some other benefit, on this record, we cannot say that the error of relying on reputational benefit did not contribute to the jury’s true findings on the gang enhancements beyond a reasonable doubt. (See *Tran, supra*, 13 Cal.5th at p. 1207 [reversing gang enhancements where jury was not presented with evidence gang members collectively engaged in pattern of criminal gang activity]; see also *People v. Sek* (2022) 74 Cal.App.5th 657, 669 [“Although there was a great deal of evidence of benefits to the gang that went beyond reputational,” Court of Appeal could not “rule out the possibility that the jury relied on reputational benefit to the gang as its basis for finding the enhancements true”].)

DISPOSITION

The petition for writ of habeas corpus, including the supplemental petition, is granted. We vacate the gang enhancement allegation findings under section 186.22, subdivision (b), and remand the matter to the trial court to permit the People to elect to retry the gang enhancements or, if the People do not so elect, for the trial court to proceed with resentencing petitioner in conformance with this opinion.
NOT TO BE PUBLISHED.

MOOR, J.

WE CONCUR:

BAKER, Acting P. J.

KIM (D.), J.