

APPENDIX

A

DEC 11 2019

Court of Appeal, Fourth Appellate District, Division One - No. D075613

Jorge Navarrete Clerk

S258700

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

EARNEST CASSELL WOODS II, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

APPENDIX

B

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

EARNEST CASSELL WOODS II,

Defendant and Appellant.

D075613

(Super. Ct. No. CR83908)

APPEAL from an order of the Superior Court of San Diego County, Michael T. Smyth, Judge. Affirmed.

Dacia A. Burz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

I

FACTUAL AND PROCEDURAL BACKGROUND

As a discotheque was closing early one morning, defendant Ernest Cassell Woods II stopped his car in an exit lane of the parking lot and blocked traffic. The victim,

Marcellus Stone, got out of his car and asked Woods to move. Woods got out of his car, brandished a gun at Stone and asked what he would do about it. Woods lowered his gun, aimed at Stone and fired. The muzzle of his gun was probably about a half-an-inch to an inch from Stone's chest when Woods fired the bullet, killing Stone.

Woods testified that it was Stone's car that backed out of a parking stall and nearly collided with his car. Both men got out of their cars. Woods said he did not see a gun but thought that Stone held a weapon due to the way he was holding his hand under his jacket. Woods said he fired at Stone when Stone was leaning toward him. Woods drove away and threw his gun into the ocean, but turned himself in a few days later.

In 1987, a jury convicted Woods of one count of second degree murder (Pen. Code,¹ § 187) with use of a deadly weapon (§ 12022.5). The court sentenced Woods to a term of 15 years to life in state prison for second degree murder with a consecutive two-year enhancement for use of a deadly weapon. We affirmed the conviction in 1988.

(People v. Woods (Sept. 19, 1988, D006442) [nonpub. opn.] (*Woods I*).)

Woods filed a petition for resentencing pursuant to section 1170.95 on December 19, 2018. In the petition, Woods checked two pre-typed boxes indicating he "was convicted of 1st or 2nd degree murder pursuant to the felony murder rule or the natural and probable consequences doctrine" and "could not now be convicted of 1st or 2nd degree murder because of changes made to Penal Code [sections] 188 and 189, effective January 1, 2019."

¹ Further statutory references are to the Penal Code.

The court denied the petition on January 16, 2019. The court found the changes to sections 188 and 189 not applicable, as the changes apply only to those who were convicted under either the felony murder rule or under the natural and probable consequences doctrine. Woods was not convicted under either theory. He was convicted of second degree murder based on the fact that he was the actual killer.

Woods filed a timely notice of appeal. The court issued a certificate of probable cause.

II

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal and asks this court to review the judgment in accord with *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738. Pursuant to *Anders*, counsel lists as a possible but not arguable issue whether the court erred by denying Woods's petition for resentencing under section 1170.95, which would require a finding that Woods was either (1) convicted of felony murder, or (2) convicted of murder under the natural and probable consequences doctrine.

The changes to sections 188 and 189 do not apply to actual killers like Woods. The purpose of the legislative change was to " 'amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a *person who is not the actual killer*, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless

indifference to human life.' " (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723, emphasis added.) The court correctly denied Woods's petition for resentencing because he actually and intentionally killed Stone.

We granted Woods the opportunity to file a brief on his own behalf and he has done so. His arguments for applicability of amended sections 188 and 189 lack merit for the reason stated above. His argument that he was convicted of felony murder is incorrect. We concluded, on direct appeal, that, beyond a reasonable doubt, he acted with express malice or, at a minimum, he appreciated the risk of death involved in his conduct of pointing a loaded revolver at Stone and pulling the trigger. (*Woods I*, D006442, at p. 6.)

Woods also raises numerous challenges to the validity of the original judgment of conviction, including challenges based on the instructions given; the applicability of imperfect self-defense to his trial; prosecutorial misconduct; a claim of actual innocence; error in the jury's verdicts; failure to provide full discovery to him; cruel and unusual punishment; evidentiary errors; error in denial of motion to reduce conviction to manslaughter; and ineffective assistance of appellate counsel in this case. Section 1170.95 does not provide convicted defendants an opportunity to challenge or relitigate the merits of their underlying judgments of conviction. It establishes only a procedure by which qualifying petitioners may obtain vacatur of their murder convictions and resentencing. Appellate counsel was not ineffective in failing to raise arguments outside the scope of this appeal from denial of petition for resentencing. Therefore, we do not consider Woods's arguments to the extent they attack the validity of the original judgment

of conviction and the alleged ineffectiveness of appellate counsel in failing to raise those issues.

We conducted an independent review of the record, including considering the *Anders* issues identified by appointed appellate counsel and the points raised in Woods's supplemental brief. Our review did not disclose any reasonably arguable appellate issues. Woods has been competently represented by counsel in this appeal.

DISPOSITION

The order is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.

APPENDIX

C

FILED
Clerk of the Superior Court

JAN 16 2019

By: A. Cabrales

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff

V.

EARNEST CASSELL WOODS,

Defendant

Case No. CR 83908

ORDER DENYING PETITION FOR
RESENTENCING (PEN. CODE § 1170.95)

THE COURT RULES AS FOLLOWS:

The court is in receipt of a Petition for Resentencing ("Petition") filed by Petitioner, pursuant to newly enacted Penal Code section 1170.95.¹ Petitioner also requests that counsel be appointed to represent him.

On September 30, 2018, former Governor Brown signed into law Senate Bill 1437, which amended Sections 188 and 189, and added Section 1170.95.

The new law alters the definition of malice, adding the following language to Section 187: "Except as stated in subdivision (e) of Section 189, in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person solely on his or her participation in a crime."

In addition, the new law restricts the felony murder rule, and only imputes liability for felony murder if an individual was (1) "the actual killer," (2) "not the actual killer, but, with the

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

1 intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the
2 actual killer in the commission of first degree murder"; or, (3) "a major participant in the
3 underlying felony and acted with reckless indifference to human life, as described in subdivision
4 (d) of Section 190.2." (§ 189, subd. (e).)²

5 Section 1170.95 provides a process by which an individual who was previously convicted
6 of first or second degree murder under either the felony murder rule or natural and probable
7 consequence doctrine can petition the court that originally sentenced him or her for resentencing.

8 Here, Petitioner was not convicted of murder based on felony murder nor the natural and
9 probable consequences doctrine. Petitioner was convicted based on the fact that he was the "actual
10 killer."

11 Thus, the changes made to by Senate Bill 1473 do not apply to him. The Petition is denied,
12 as is the request for counsel.

13 A copy of this Order shall be served upon (1) Petitioner; (2) the San Diego County Public
14 Defender's Office (Attn: John O'Connell); and, (3) the San Diego County District Attorney's
15 Office (Attn: Christine Bannon).

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17 IT IS SO ORDERED.

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19 DATED: January 16, 2019

Michael T. Smyth
MICHAEL T. SMYTH
JUDGE OF THE SUPERIOR COURT

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29 ² The new felony murder rule does not apply to "a defendant when the victim is a peace officer who was killed while
30 in the course of his or her duties, where the defendant knew or reasonably should have known that the victim was a
peace officer engaged in the performance of his or her duties." (§ 189, subd. (f).)

**Additional material
from this filing is
available in the
Clerk's Office.**