

SUPREME COURT OF THE UNITED STATES

WENDELL RAY THOMAS, } No. _____
Petitioner, }
v. } PETITION FOR WRIT OF
LAURA ELDRIDGE, Warden, } CERTIORARI
Respondent. }

APPENDIX TO THE
PETITION FOR WRIT
CERTIORARI

APPENDIX "A" thru "H"

Wendell Ray Thomas, #F-37466
California Health Care Facility
P.O. Box 213040-E3A-141-Up
Stockton, CA 95213
Petitioner Pro Se

SUPREME COURT
FILED

Court of Appeal, Second Appellate District, Division One - No. B302720

JAN 29 2020

Jorge Navarrete Clerk

S259777

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re WENDELL RAY THOMAS on Habeas Corpus.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix "A", p.19

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re

WENDELL RAY THOMAS

on

Habeas Corpus.

B302720

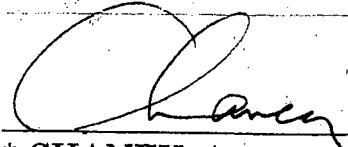
(Super. Ct. L.A. County
No. VA089835)

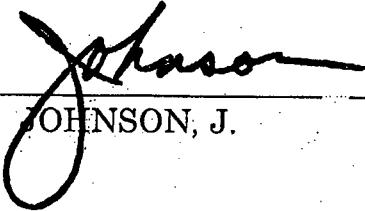
ORDER

THE COURT*:

The petition for writ of habeas corpus, filed December 4, 2019, has been read and considered.

The petition is denied.


* CHANEY, Acting P.J.


JOHNSON, J.


BENDIX, J.

Wendell Ray Thomas
CDC #: F-37466
California Health Care Facility
P.O. Box 32200
Stockton, CA 95213

Case Number B302720
Division 1

In re WENDELL RAY THOMAS on Habeas Corpus.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DANIEL P. POTTER, CLERK

DIVISION a

Los Angeles County Superior Court

THE PEOPLE,
Plaintiff and Respondent,
v.
WENDELL RAY THOMAS,
Defendant and Appellant.
B300032
Los Angeles County Super. Ct. No. VA089835

*** REMITTITUR ***

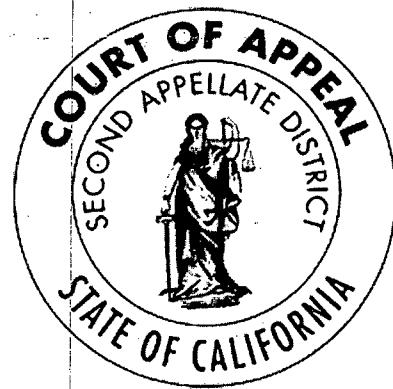
I, Daniel P. Potter, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on September 30, 2019 and that this order, opinion or decision has now become final.

Witness my hand and the seal of the Court
affixed at my office this

Dec 02, 2019

DANIEL P. POTTER, CLERK

by: R. Cervantes,
Deputy Clerk



cc: All Counsel
File

Wendell Ray Thomas
CDC #: F37466 DOB: 02/19/1981
California Health Care Facility
P.O. Box 32200
Stockton, CA 95213

Case Number B300032
Division a
THE PEOPLE,
Plaintiff and Respondent,
v.
WENDELL RAY THOMAS,
Defendant and Appellant.

*** NOTICE ***

Enclosed is a copy of the remittitur that has issued in the above-entitled cause.
This notice is sent as required pursuant to Calif. Rule of Court 8.272(d).

A copy of this court's order, opinion or decision which was mailed to you upon its
filing is not enclosed with this mailing.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION a

COURT OF APPEAL - SECOND DIST.

FILED

Sep 30, 2019

DANIEL P. POTTER, Clerk

R. Cervantes Deputy Clerk

THE PEOPLE,

B300032

Plaintiff and Respondent,

(Super. Ct. No. VA089835)

v.

Los Angeles County

WENDELL RAY THOMAS,

O R D E R

Defendant and Appellant.

THE COURT:

Wendell Ray Thomas was convicted of attempted murder, personally discharging a firearm causing great bodily injury, and possession of a firearm by a felon. Thomas was sentenced to a term of imprisonment of 34 years to life. The conviction was affirmed in full in *People v. Thomas* (May 11, 2009, B205449 [nonpub. opn.]).

On June 22, 2015, Thomas filed a petition for a writ of habeas corpus asserting that trial counsel was mentally ill and incompetent at the time of trial. We ordered the superior court to hold an evidentiary hearing and made our order to show cause returnable in the superior court. (September 25, 2015, B264969.)

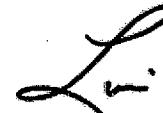
The superior held an evidentiary hearing in compliance with our order. On June 13, 2019, the superior court issued detailed factual findings concluding that there was no basis for attributing counsel's actions to mental

illness or incompetence. The superior court effectively denied Thomas' petition for a writ of habeas corpus.

On July 8, 2019 and July 17, 2019, Thomas filed notices purporting to appeal from the order of June 13, 2019.

In cases not involving judgments of death (Pen. Code, § 1509), “[n]o appeal lies by a defendant from an order of the superior court denying a writ of habeas corpus...The attempted appeal therefrom must be dismissed.” (*People v. Ryan* (1953) 118 Cal.App.2d 144, 149; accord, *People v. Gallardo* (2000) 77 Cal.App.4th 971, 983.)

The appeal initiated by the notices filed on July 8, 2019 and July 17, 2019 is dismissed.



Elwood Lui, Administrative Presiding Justice

Wendell Ray Thomas
CDC #: F37466 DOB: 02/19/1981
California Health Care Facility
P.O. Box 32200
Stockton, CA 95213

Division a
THE PEOPLE,
Plaintiff and Respondent,
v.
WENDELL RAY THOMAS,
Defendant and Appellant.
B300032

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL - SECOND DIST.

FILED

Dec 04, 2017

JOSEPH A. LANE, Clerk

ccassidy Deputy Clerk

In re

B285372

WENDELL THOMAS

(Super. Ct. L.A. County
No. VA089835)

on

(MICHAEL A. COWELL, Judge)

Habeas Corpus.

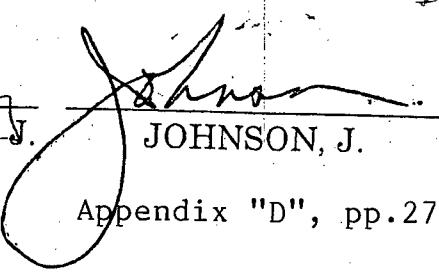
ORDER

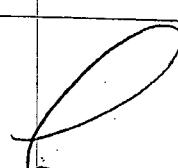
THE COURT*:

The matter is remanded to the superior court, which is ordered: (1) to vacate its July 19, 2016 order denying the petition for writ of habeas corpus, and (2) to comply with the 2015 order to show cause issued by this Court in case No. B264969, directing the superior court to conduct an evidentiary hearing.

Within 60 days of the date of this order, the superior court shall provide this Court with a certified copy of the order demonstrating compliance.


* CHANEY, Acting P.J.


JOHNSON, J.


LUI, J.

Wendell Thomas
CDC #: F-37466
California Health Care Facility
P.O. Box 32050
Stockton, CA 95213

Case Number B285372
Division 1

In re WENDELL THOMAS on Habeas Corpus.

Appendix "D", pp.28

NOT TO BE PUBLISHED IN THE 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.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

WENDELL RAY THOMAS,

Defendant and Appellant.

B205449

(Los Angeles County
Super. Ct. No. VA089835)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan Sullivan Pithey and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Wendell Ray Thomas guilty of attempted murder with a firearm enhancement in the shooting of Jarrell Lewis in a Denny's parking lot. Thomas appeals, arguing that there was insufficient evidence that he intended to kill Lewis. We affirm.

BACKGROUND

An amended information filed February 15, 2006 charged Thomas with attempted willful, deliberate, and premeditated murder in violation of Penal Code sections 664, 187, subdivision (a), and with personally discharging a firearm causing great bodily injury, in violation of Penal Code section 12022.53, subdivisions (b) through (d) (count 1). The information also charged possession of a firearm by a felon, in violation of Penal Code section 12021, subdivision (a)(1) (count 2). Thomas waived jury trial on the prior conviction allegation and admitted a prior felony for purposes of count 2, but pled not guilty to count 1.

At trial, the prosecution and the defense presented two opposing versions of the events outside a Denny's on Lakewood Boulevard, early in the morning of May 28, 2005. Thomas had arrived with friends, who were sitting inside at a table waiting to order when he went outside to smoke a cigarette. The victim, Lewis, testified that he had been drinking at a nightclub with two cousins. They stopped at the Denny's to use the bathroom, and Lewis and one cousin got out of the car. After he used the bathroom, Lewis was talking and joking with someone outside the Denny's when Thomas approached him and said, "I'm from Mona Park" (the name of a gang). Lewis answered, "Cross Atlantic Piru," another rival gang, although he was not a gang member. Thomas persisted, and Lewis laughed and said, "It's cool. I'm not tripping." Thomas went back inside the Denny's, and Lewis continued his conversation. A moment after, the door swung open, and Thomas began to shoot a gun at Lewis from fifteen feet away. Lewis began to run and realized he had been shot in the arm and chest. He ran across the street and into the path of an officer who had heard the shots and was driving his patrol car to the Denny's. The officer ordered Lewis to get down, and called the paramedics. He searched Lewis, who was unarmed.

Lewis's cousins ran up and were also searched and found to be unarmed. The cousins told the deputy that the shooter was a black male wearing a camouflage jacket who drove off in a silver Chevy Avalanche. Both cousins said they saw Lewis talking to the person wearing camouflage, both stated they saw the same person shoot at Lewis just outside the restaurant, and both later identified Thomas as the shooter. The deputies found five bullet casings no more than twenty feet from the front door of the Denny's, and an expended bullet was found in the street.

Meanwhile, Thomas had left the scene in the front passenger seat of a silver Chevy Avalanche driven by one of his friends. Deputies responding to a broadcast reporting the shooting and identifying the car, pulled the Avalanche over. Thomas was wearing a camouflage jacket as described in the broadcast. After he exited the car the deputies found a magazine clip on the floor of the front passenger area, and under the passenger's seat they found an unloaded handgun. A ballistics expert testified that the bullet casings found in the parking lot had been fired by that gun.

A deputy and expert on gangs testified that the verbal exchange described by Lewis could be construed as a challenge, and that laughing would be considered disrespect and could lead to an assault. The deputy had been assigned to investigate the shooting, and also testified that the driver of the Avalanche had told him that when Thomas got into the car after the shooting, Thomas said "I didn't want to shoot, but that slob was tripping." "Slob" was a derogatory gang term. (At trial, the driver denied making that statement.)

Thomas told a different story in his testimony. He said he was smoking outside of the Denny's with a friend when Lewis yelled, "Cross Atlantic Piru." He answered, "Man, you need to go on with that," and Lewis replied, "Shut up. I beat both of you all asses." Lewis then took off his jacket, approached Thomas, and said, "I'm Piru. I'll fuck you all up. I'll fuck you all up." Thomas had done nothing to provoke the confrontation. Lewis walked away, then returned, again threatening Thomas. Lewis retreated a second time, then came back and spit at Thomas, saying, "I'm Cross Atlantic Piru. You dead" and walked off. Thomas denied being a gang member.

Thomas and his friend went back into Denny's to tell the rest of his group to leave to avoid a fight. When Thomas opened the door to go he saw Lewis right there, lifting up an automatic weapon. Thomas had a firearm in his waistband "for safety." He faded back out of fear, pulled out the gun and fired it at Lewis. Lewis fell backward to one knee, then came back up, lifting his weapon. Thomas then shot Lewis again. Both men ran, and Thomas heard four more shots in quick succession. He feared for his life.

Thomas jumped into the truck, disarmed the weapon, and put it under the seat. The car drove off and the police stopped it a few minutes later, finding Thomas's weapon. No second weapon was ever found in the search of the parking lot and surrounding area.

The jury was instructed on attempted murder, attempted voluntary manslaughter, and self-defense. The jury found Thomas guilty of attempted murder and of the firearm charges, but not guilty of committing the attempted murder willfully, deliberately, and with premeditation. The trial court sentenced Thomas to 9 years in prison on count 1 (attempted murder), an additional 25 years to life for the firearm enhancement, and a two-year concurrent midterm on count 2 (felon in possession of a firearm) for a total of 34 years, as well as restitution and fines.

DISCUSSION

Thomas argues that there was insufficient evidence of intent to support his conviction for attempted murder.

In evaluating a challenge to the evidence supporting the jury's verdict, we review the entire record in the light most favorable to the verdict for "evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Snow* (2003) 30 Cal.4th 43, 66.) We will reverse only if "it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].'" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We do not reweigh the evidence or redetermine the credibility of witnesses. (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

The crime of attempted murder requires the specific intent to kill and “the commission of a direct but ineffectual act toward accomplishing the intended killing.” (*People v. Lee* (2003) 31 Cal.4th 613, 623.) Intent is the same as express malice, which requires a showing that the defendant either desires the result (the death of the victim) or knows to a ““substantial certainty that the result will occur.”” (*People v. Davenport* (1985) 41 Cal.3d 247, 262.) There is rarely direct evidence of intent or malice, and so the intent to kill or express malice may be inferred from the defendant’s acts and the circumstances of the crime. (*People v. Chinchilla* (1997) 52 Cal.App.4th 683, 690.) “The act of firing toward a victim at a close, but not point blank, range ‘in a manner that could have inflicted a mortal wound had the bullet been on target is sufficient to support an inference of intent to kill.’” (*Ibid.*) That inference does not require a further showing of any particular motive to kill the victim. (*People v. Smith* (2005) 37 Cal.4th 733, 743.)

There was ample evidence that Thomas intended to kill Lewis and committed a direct act toward that end. Thomas exchanged words with Lewis outside of Denny’s, entered the restaurant, and returned with a gun, firing multiple shots at Lewis from no more than 15 feet away. Thomas’s act of shooting at Lewis at a close range, which could have killed Lewis, is sufficient to support the jury’s conclusion that Thomas intended to kill. Although both Thomas and Lewis testified to gang-related vocabulary in their conversation, the prosecution was not required to show any particular motive for Thomas to shoot Lewis. The jury was entitled to judge the credibility of the witnesses and to believe Lewis’s account rather than Thomas’s story of self-defense, especially since the only weapon recovered was Thomas’s and all the bullet casings in the parking lot were from his gun. Sufficient evidence supported the jury’s verdict.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

WEISBERG, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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