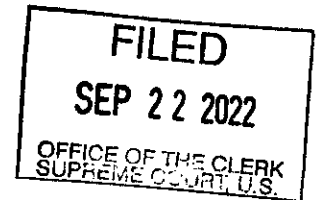


No. 22-5743 ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

TIMOTHY LOVE — PETITIONER
(Your Name)

vs.

JIM ROBERTSON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TIMOTHY LOVE CDCR# BN-5330
(Your Name)

Pelican Bay State Prison, P.O. Box 7500
(Address)

Crescent City CA. 95532
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Is the prosecution's failure to plead crimes of violence against multiple people a legal reason why to stay the sentence for shooting at an occupied vehicle pursuant to Penal Code Section 654.

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Los Angeles County
District Attorney
211 W. Temple st
Los Angeles CA. 90012

Timothy Love
PBSP
P.O. Box 7500
Crescent City CA.
95532

RELATED CASES

N/A

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits ~~is not available~~ Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Court of appeal of the state of California, court appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was August ?.
A copy of that decision ~~is not available to petitioner.~~

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Cal. Const. art. I, 15

U.S. Const. 5th Amend.

U.S. Const. 6th Amend.

U.S. Const. 14th Amend.

STATEMENT OF THE CASE

By an amended information dated February 11, 2020, Timothy Love and co-defendants Jeremiah Atlas and Dasha Delaina Goldston were each charged with the murder of Ontario Courtney (Pen. Code, § 187, subd. (a); count 1), the premeditated attempted murders of Schquana Phillips and Miesha Tyars (Pen. Code, §§ 187, subd. (a)/664; counts 2 and 3), and shooting at an occupied vehicle (Pen. Code, § 246; count 4). Each count included a gang allegation and firearm allegations (Pen. Code, § 186.22, subd. (b)(1)(C); Pen. Code, § 12022.53, subds. (b), (c), (d), and (e)(1)). (1 CT 179-184.)¹

Love and Atlas were tried before one jury and Goldston before a separate jury. (1 CT 193 [minutes].)² On March 16, 2020, a jury found Love guilty of first-degree murder and shooting at an occupied vehicle. It acquitted him on the two counts of premeditated attempted murder. With respect to the murder offense, the jury found true the allegations that a principal used a firearm, discharged a firearm, and caused the

¹ The amended information also charged Atlas with numerous other offenses. (1 CT 185-191 [counts 5-19].) Those counts were not part of the trial. (1 CT 197 [minutes].)

² "CT" and "RT" refer to the Clerk's Transcript and the Reporter's Transcript that were filed in B307748 on November 5, 2020. "SCT" refers to the Supplemental Clerk's Transcript that was filed in B307748 on January 21, 2021.

death of Courtney (Pen. Code, § 12022.53, subds. (b) & (e)(1), (c) & (e)(1), and (d) & (e)(1)) and that the crime was committed for the benefit of a criminal gang (Pen. Code, § 186.22, subd. (b)(1)(C)). As for the shooting at an occupied vehicle offense, the jury found true the allegations that Love personally used, personally discharged, and caused the death of Courtney (Pen. Code, § 12022.53, subds. (b), (c), and (d)) and that the crime was committed for the benefit of a criminal gang (Pen. Code, § 186.22, subds. (b)(1)(C) and (b)(4)). (2 CT 388-389, 391-392 [minutes]; 2 CT 377-380 [signed verdict forms]; 10 RT 3309-3312.) The jury returned the identical verdicts for Atlas. (10 RT 3312-3314.)³

On July 29, 2020, the trial court sentenced both Love and Atlas as follows: 25 years to life for the murder, plus a consecutive sentence of 25 years to life (Pen. Code, § 12022.53, subds. (d) & (e)(1)), and a consecutive sentence of 15 years to life for shooting at an occupied vehicle (Pen. Code, §§ 246, 186.22, subd. (b)(4)(B)), plus a consecutive sentence of 20 years to life (Pen. Code, § 12022.53, subd. (c)). (3 CT 631; 10 RT 4524-4527.)

Love filed a timely notice of appeal on September 14, 2020. (3 CT 634.) On June 14, 2021, this court ordered Love's appeal consolidated with Atlas's appeal, E306982, for purposes of briefing, argument, and decision.⁴

³ The record on appeal provided to Love's appellate counsel does not contain any information concerning the verdicts for Goldston.

⁴ The reporter's transcripts for the two appeals appear to be the same. The clerk's transcripts, however, appear to be different.

STATEMENT OF FACTS

The shooting death of Ontario Courtney. Around 4:30 a.m. on September 13, 2017, near the intersection of Hoover Street and 51st Street in Los Angeles, Moris Garay was awakened by the sound of gunfire. (4 RT 1249-1252.) He saw a dark car alongside a red SUV and a person shooting into the SUV. (4 RT 1253-1254, 1258.) He did not see any shooting from the SUV. (4 RT 1258.) The shooter got into the passenger side of the dark car, and the car drove off. (4 RT 1259-1260.) Garay then saw a man get out of the passenger seat of the SUV, walk a short distance, and fall. (4 RT 1261.) He also saw two women get out of the SUV and run to the man. (4 RT 1262-1264.)

In a recorded on-the-scene interaction with police shortly after the shooting, Schquana Phillips pleaded for medical assistance for Ontario Courtney. (Ex. 4 [DVD]; 1 SCT 74, 77 [Ex. 78—transcript].) Miesha Tyars told police that “we were sitting [] waiting on Triple A” because the battery in the SUV had died, and “they shoot my momma car up.” (1 SCT 78-79.) Courtney died from three gunshot wounds. (7 RT 2107, 2112-2113, 2115, 2125.)

Officer Thomas Call and his partner were on patrol nearby when he heard gunfire at around 4:30 a.m. (5 RT 1592-1596.) A woman flagged him down, pointed at a black Honda traveling on Hoover Street, and screamed, “Go get that vehicle.” (5 RT 1596, 1601.) The officers pursued the Honda until it crashed and rolled to its side at Broadway and 67th Street. (5 RT 1612, 1642; Ex. 51 [dash cam video from Call’s patrol car].) Five people came out of

the Honda following the crash—Goldston, Love, Atlas, and two male juveniles, J.Y. and J.G. (5 RT 1607-1608, 1611-1612.)

Physical/forensic evidence. At the crash site, police recovered two semi-automatic handguns from inside the car and two outside of it: a 9mm Beretta, a .40 caliber Ruger, a .45 caliber Springfield, and a .22 caliber Colt. (5 RT 1633, 1635, 1639, 1643, 1646.) Only the .40 caliber Ruger had ammunition in it. (5 RT 1644.) Each gun was functional. (7 RT 2143.) J.Y. was a major contributor to a DNA mixture found on the .45 caliber pistol. (8 RT 2493.)

Investigators found approximately 20 bullets strikes to the outside of the SUV and recovered 29 bullet fragments inside the SUV. (6 RT 1843-1844, 1878, 1897-1898.) They also recovered from the scene of the shooting 37 casings—eleven that were .45 caliber, eleven that were .22 caliber, ten that were 9 mm, and five that were .40 caliber. (5 RT 1686-1691.) A criminalist determined that the casings were fired from the corresponding guns recovered at the crash scene. (7 RT 2151-2152.) Police found no weapons in the SUV (7 RT 2178) and no evidence that any shots were fired from the direction of the SUV (6 RT 1823).

An officer transporting Love saw him throw something into a trash can immediately before entering the police station. (8 RT 2466.) The officer found a live .45 caliber bullet inside the trash can. (8 RT 2466, 2468; Ex. 4—video of bodycam; Ex. 142—transcript].)

Goldston testimony. Neither Love nor Atlas testified. But Goldston did. She testified that she was in a sexual

relationship with J.Y. for about a month and a half before the shooting. (8 RT 2536, 2539.) In the early morning hours of September 13, Goldston drove her Honda to meet J.Y., and they were later joined by Atlas, Love, and J.G., whom J.Y. wanted to drive home. (8 RT 2522-2524.) J.Y. drove the Honda, Goldston was in the front passenger seat, and the remaining three sat in the back. (8 RT 2524; 9 RT 2722.)

At some point during the drive, they were in the territory of the Hoover Criminals street gang and each of the four males pulled out a gun. (8 RT 2526; 9 RT 2721.) About 30 minutes later, they stopped at the intersection of 51st Street and Hoover Street. (8 RT 2526-2527; 9 RT 2721, 2801.) Inside a red SUV that was parked nearby, Goldston saw a woman in the front and a woman and a man in the back. (9 RT 2768-2769.) She heard the four males in her car say, "Main Street." (9 RT 2765-2766.) All four then got out of the Honda. (8 RT 2528; 9 RT 2766.) Goldston heard gunfire, but did not see the shooting because she ducked. (9 RT 2708-2709, 2766.) Afterward, all four got back in the Honda, each holding a gun. (8 RT 2529; 9 RT 2769-2770.) J.Y., who was bleeding from his abdomen, got in the driver's seat and began driving, but Goldston soon took over. (8 RT 2529-2530; 9 RT 2770, 2772-2773.) At some point, she saw the police car behind her, but she did not stop until she crashed. (2 RT 2773-2776.)

Goldston admitted that she told some lies to the detectives during her interview. (9 RT 2723.) And her testimony differed in material respects from her statements to detectives. (9 RT 2777,

2779 [Ex. 94—video of Goldston interview played]; 1 SCT 81-144 [Ex. 95—transcript].)

Recorded jail cell conversation between Love and Atlas. Following their arrests and interviews with detectives, Atlas and Love were placed in the same jail cell where their conversation was recorded. (7 RT 2201; 8 RT 2411-2412; Ex. 137—audio recording; 2 CT 248-289 [Ex. 138—transcript].) At times, Love denied having done anything wrong. (See, e.g., 2 CT 251 [Love saying that he was told he was getting booked for murder and stating, “how we getting booked for something we ain’t do?”]; 2 CT 254 [“we didn’t do this. . . . We didn’t do it, man.”].) Love and Atlas discussed that “Tiny East” and “Bink” were lucky because they were juveniles. (2 CT 255.) They speculated about how Tiny East might have gotten shot, with Love fearing that he shot him and Atlas disagreeing. (2 CT 257.)

Love told Atlas that he told detectives he had been asleep and woke up to sounds of shots and the car flipping over. (2 CT 266.) He said that he and Atlas should be consistent in their stories: “Now, when you go to your attorney, tell her same shit I said. You feel me? Right? We – me and you was in the car asleep or loaded, whatever, however it went. Like, you feel me? And then we gonna beat it. [¶] We ain’t know . . . we wasn’t shooting. We woke up to it. Nigga woke up to that shit.” (2 CT 266-267.) Atlas responded, “It just wasn’t like we – we knew what was going on. I woke up to shots fired.” (2 CT 267.)

Atlas told Love that he “was trying to put my shit . . . in the cut of my briefs as we was rolling because my shit fell outta my

hand because I put my hand up so I don't fall." (2 CT 267.) Love responded that he "threw it up in there." (2 CT 268.) Atlas later complained that he did not buy guns so that he could "just take it to the dump." (2 CT 283.) He appeared to be saying that he had hidden one or more guns in the dashboard. (2 CT 283.) Atlas speculated, "I think my prints are on [inaudible]. But my shit ain't on the trigger." (2 CT 284.)

Gang evidence. Officer Alex Zamora, the prosecution's gang expert, testified that, based on a variety of indicia, Love, Atlas, J.Y., and J.G. were members of the Main Street Mafia Crips. (5 RT 1506, 1509-1510, 1517, 1522-1523.) He agreed that he had no basis to conclude that Goldston was a gang member. (5 RT 1584.) Zamora was unaware of Courtney having any gang affiliations. (5 RT 1548, 1570.) The Hoover Criminals street gang was one of the two main rivals of the Main Street Mafia Crips. (4 RT 1307.)

Following a hypothetical question tracking the evidence in the case, Zamora opined that the shooting was committed for the benefit of and in association with a criminal street gang with the intent to further criminal conduct by the gang. (8 RT 2473-2474.)

I. The trial court erred in failing to stay the sentence for shooting at an occupied vehicle pursuant to Penal Code section 654.

Co-appellant Atlas argued in his opening brief that the sentence for shooting at an occupied vehicle should have been stayed pursuant to Penal Code section 654 because the shooting was the means of perpetrating the murder. (AOB 43-46, 54-56 citing, among other cases, *Neal v. State of California* (1960) 55 Cal.2d 11.) Atlas further argued that the exception to Penal Code section 654 for crimes of violence against multiple victims did not apply because the prosecution did not plead, and the jury did not find, facts justifying the application of the exception. (Atlas AOB 46-50, citing *People v. Miller* (1977) 18 Cal.3d 873 and *People v. Oates* (2005) 32 Cal.4th 1048).

Like Atlas, Love entertained only a single objective when committing the murder and shooting at an occupied vehicle—to kill Courtney—and the shooting was the means by which to commit the murder. The allegations pleaded by the prosecution and the jury's findings were identical for Atlas and Love. (1 CT 182-184 [amended information]; 2 CT 377-380 [jury verdicts].) Thus, Atlas's arguments – that the murder and the shooting constitute an indivisible course of conduct for which he may be punished only once under Penal Code section 654 and that the multiple-victim exception did not apply because the prosecution did not plead and the jury did not find there were multiple victims – apply equally to Love, and Love joins those arguments.

Accordingly, for the reasons set out in Atlas's brief, Love's sentence on count 4 should be stayed (Please see Co-defendant Opening Brief (Jeremiah Atlas)-not available to petitioners.

II. Love joins Atlas's argument that the minutes and abstract should be corrected to reflect a firearm enhancement of 20 years, rather than 20 years to life, pursuant to Penal Code section 12022.53, subdivision (c).

Atlas argued, in connection with count 4, that the trial court erred when it imposed a sentence of 20 years to life, rather than a determinate sentence of 20 years, pursuant to Penal Code section 12022.53, subdivision (c). (Atlas AOB 56.) Love joins the argument.

The trial court imposed on both Love and Atlas a sentence of 20 years to life for the personal discharge firearm allegation for count 4. (10 RT 4524-4525.) The minutes and abstract of judgment reflect a sentence of 20 years to life. (3 CT 608 [minutes]; 3 CT 631 [abstract, box 2].)

That sentence was unauthorized because Penal Code section 12022.53, subdivision (c), provides for a determinate term of 20 years. Defense counsel did not object, but the issue is not forfeited because an unauthorized sentence may be corrected at any time. (*People v. Smith* (2001) 24 Cal.4th 849, 852.) Accordingly, the minutes and the abstract should be corrected to reflect a sentence of 20 years.

Relatedly, the abstract should be corrected to reflect that the sentence of 15 years to life was for count 4 rather than count 2 (3 CT 631 [box 6a]) and that the enhancement pursuant to section 12022.53, subdivision (c), was for count 4, and not count 2. (3 CT 631 [box 2].)

CONCLUSION

This court should order the minutes and abstract corrected as provided in section II.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Love

Date: September 16, 2012