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Court of Appeal, Fourth Appellate District, Division Two
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COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

THE PEOPLE,
Plaintiff and Respondent,
v.
MOSES D. ESTRADA,
Defendant and Appellant.

E073286

(Super.Ct.No. FWV1503214)

The County of San Bernardino

THE COURT

The court has considered appellant's motion to recall the remittitur that was filed in propria persona on August 24, 2022. The motion is DENIED.

Appellant requests the remittitur be recalled and the appeal reinstated to provide him with a complete and adequate appeal. He identifies over 40 separate claims of error that he contends should have been presented on appeal. The claims allege ineffective assistance of counsel and legal errors made by the trial court.

Despite the numerous claims of error, appellant has not established good cause to recall the remittitur. (Cal. Rules of Court, rule 8.272(c)(2).) He has not shown the judgment was the product of fraud, mistake, or inadvertence. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 165.) Nor has he established the errors were of such dimensions as to entitle him to habeas corpus relief. (*People v. Mutch* (1971) 4 Cal.3d 389, 396.)

As to the ineffective assistance of counsel claims, the motion offers minimal argument and fails to address prejudice. (See *Strickland v. Washington* (1984) 466 U.S. 668, 694 [prejudice is demonstrated by showing "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"].) Additionally, many of the ineffective assistance of counsel claims relate to the failure of trial counsel to object, to properly impeach witnesses, and to present certain evidence. These are matters which typically involve tactical decisions on counsel's part. (*People v. Barnett* (1998) 17 Cal.4th 1044, 1140.) As such, they encompass matters outside the record and are more appropriately addressed in an original habeas corpus proceeding rather than on direct appeal. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

As to the legal errors appellant contends the trial court made, the motion does not establish that the errors were of such dimensions as to entitle him to habeas corpus relief. (*People v. Mutch, supra*, 4 Cal.3d at pp. 396-397.) "Postconviction habeas corpus attack on the validity of a judgment of conviction is limited to challenges based on newly discovered evidence, claims going to the jurisdiction of the court, and claims of constitutional dimension." (*In re Clark* (1993) 5 Cal.4th 750, 766-767.) To the extent that appellant's judicial error claims are deemed constitutional because they are raised in the context of an ineffective assistance of appellate counsel claim, appellant has not shown that any of the errors he identified raise " 'a significant and obvious issue' " that was " 'clearly stronger than those presented' " on appeal. (*In re Hampton* (2020) 48 Cal.App.5th 463, 477-478.)

MENETREZ

Acting P. J.

cc: See attached list

SUPREME COURT
FILED

DEC 21 2022

Jorge Navarrete Clerk

Deputy

Court of Appeal, Fourth Appellate District, Division Two - No. E073286

S277366

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

MOSES D. ESTRADA, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice