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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO MARQUIS EUBANKS,

Defendant and Appellant.

G062976

(Super. Ct. No. FSB1104013)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of San Bernardino County, Harold T. Wilson, Jr., Judge. Affirmed.

Melanie L. Skehar, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Arlene A. Sevidal, James M. Toohey and Andrew Mestman, Deputy Attorneys General, for Plaintiff and Respondent.

Antonio Eubanks challenges the trial court's summary denial of his petition for relief under Penal Code section 1172.6.¹ He claims nothing in his record of conviction rendered him ineligible for relief. As discussed below, we conclude Eubanks was conclusively ineligible for relief because the jury found that he was the actual killer. Accordingly, we affirm.

FACTS

I.

OFFENSES AND INFORMATION

In 2011, Matthew Cook was a 29-year-old mentally disabled man who had recently moved into his own apartment. Eubanks met Cook at work and began manipulating him. Eubanks moved into Cook's apartment rent free, used his car and phone, and forged checks in his name. After Cook and his mother reported Eubanks to the police, Eubanks lured Cook to his brother's apartment, where Cook was bound, beaten, and suffocated to death.² Eubanks and his brother disposed of his body in a garbage can. The brother then stole Cook's car and drove it to Cook's apartment, where they stole additional items. They later fled the state in Cook's car.

After Eubanks and the brother were apprehended, they were charged with first degree murder and robbery. As to the murder count, the information alleged three special circumstances: (1) the victim was murdered

¹ Effective June 30, 2022, the Legislature renumbered former Penal Code section 1170.95 to section 1172.6 without substantive change. (Stats. 2022, ch. 58, § 10.) For purposes of clarity, we refer to the statute as section 1172.6 throughout the opinion. All further statutory references are to the Penal Code.

² Eubanks claimed that the brothers' plan was merely to rob Cook and steal his car and that it was his brother who killed Cook.

during the course of a robbery; (2) the murder was committed by means of lying in wait; and (3) the murder was committed to prevent a witness from testifying.³

II.

TRIAL AND VERDICTS

In 2012, Eubanks and his brother were tried together before separate juries. Eubanks's jury was instructed on theories of first degree felony murder and second degree malice murder. It was also instructed on aiding and abetting of intended crimes and an uncharged conspiracy to commit robbery. (CALCRIM Nos. 400, 401, 416.) It was not instructed on the natural and probable consequences doctrine.

As relevant here, on the lying-in-wait special circumstance, Eubanks's jury was instructed: "To prove that this special circumstance is true, the [prosecution] must prove that: [¶] 1. The defendant intentionally killed . . . Cook; [¶] AND [¶] 2. The defendant committed the murder by means of lying in wait." The instruction proceeded to explain when murder is committed by lying in wait. The jury was not instructed on aiding and abetting principles in connection with this special circumstance.

Following deliberations, Eubanks's jury found him guilty of felony murder and robbery. It also found true all special-circumstance allegations, including the lying-in-wait allegation.⁴ The trial court sentenced him to life without parole, plus a consecutive determinate term.

³ Eubanks was also charged with two counts of forgery.

⁴ The brother's jury likewise found him guilty of felony murder and robbery, and it found the robbery-murder special-circumstance allegation true. However, that jury found the lying-in-wait and witness-killing special circumstances not true as to the brother.

III.

EUBANKS'S MOTION UNDER SECTION 1172.6

In 2022, Eubanks filed a petition for resentencing under section 1172.6. After appointing counsel, receiving briefing, and holding a hearing, the trial court summarily denied his petition. The court concluded that the combination of his conviction for felony murder and the jury's special-circumstance findings rendered him ineligible for relief. Eubanks appealed.

DISCUSSION

Eubanks contends the trial court erred by summarily denying his section 1172.6 petition because nothing in his record of conviction rendered him ineligible for relief. As discussed below, the jury's true finding on the lying-in-wait special circumstance established that he was the actual killer. Thus, the court correctly concluded he was ineligible for relief.

I.

GOVERNING LAW

Effective January 2019, Senate Bill No. 1437 (2017–2018 Reg. Sess.) (SB 1437) (Stats. 2018, ch. 1015) limited accomplice liability under the felony-murder rule and eliminated the natural and probable consequences doctrine as it relates to murder. (*People v. Maldonado* (2023) 87 Cal.App.5th 1257, 1260.) As relevant here, to limit felony-murder liability, the bill added section 189, subdivision (e), under which a defendant involved in a qualifying felony resulting in death is liable for murder only if the defendant (1) was the actual killer, (2) was not the actual killer but, with the intent to kill, aided “the actual killer in the commission of murder in the first degree”; or (3) was a major participant in the felony and acted with reckless indifference to human life. (§ 189, subd. (e).)

Those convicted under the former murder laws may seek retroactive relief under the amended laws. (*People v. Maldonado, supra*, 87 Cal.App.5th at p. 1260.) Under section 1172.6, a defendant may file a petition for relief in the sentencing court. (§ 1172.6, subd. (b)(1); *Maldonado*, at p. 1260.) Petitioners must allege, inter alia, that the information allowed the prosecution to proceed under a theory of imputed malice, including felony murder (§ 1172.6, subd. (a)(1)), and that they “could not presently be convicted of murder” because of SB 1437’s changes to the law (§ 1172.6, subd. (a)(3)).

The sentencing court must then determine whether the petitioner has made a prima facie showing that he or she is entitled to relief. (§ 1172.6, subd. (c).) In assessing the petition at this stage, the court ““makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proved.”” (*People v. Lewis* (2021) 11 Cal.5th 952, 971.) If so, it must issue an order to show cause and hold an evidentiary hearing. (*Ibid.*) The court may examine the record of conviction to assess whether it refutes the petitioner’s claim of eligibility. (*Ibid.*)

II.

ANALYSIS

The trial court did not err by summarily denying Eubanks’s petition because he was ineligible for relief as a matter of law. As noted, the jury found true the lying-in-wait special circumstance. Under the instruction the jury received, this finding required a determination that “[t]he defendant intentionally killed” Cook. In other words, the jury found that Eubanks was the actual killer. This finding is preclusive—Eubanks may not relitigate the issue. (*People v. Curiel* (2023) 15 Cal.5th 433, 453 [“a relevant jury finding is generally preclusive in section 1172.6 proceedings”].)

As described above, even under current law, a defendant involved in a qualifying felony resulting in death may be convicted of murder if the defendant is the actual killer. (§ 189, subd. (e)(1).) Thus, the jury's finding conclusively refutes Eubanks's allegation that he "could not presently be convicted of murder" because of SB 1437's changes to the law. (§ 1172.6, subd. (a)(3).) Accordingly, he is ineligible for relief under section 1172.6.

Eubanks argues the record of conviction does not conclusively establish he was the actual killer because "the record indicates it was unclear who was the actual killer and [he] could have been convicted as an aider and abettor of the felony murder robbery." He does not address his jury's determination, as part of its lying-in-wait finding, that he "intentionally killed" Cook. As noted, this determination renders him ineligible for relief.

DISPOSITION

The postjudgment order is affirmed.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

SANCHEZ, J.

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O R D E R

The petition for rehearing is DENIED.

O'LEARY, P. J.

WE CONCUR:

MOORE, J.

SANCHEZ, J.

SUPREME COURT
FILED

MAY 28 2025

Jorge Navarrete Clerk

Deputy

Court of Appeal, Fourth Appellate District, Division Three - No. G062976

S290395

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

ANTONIO MARQUIS EUBANKS, Defendant and Appellant.

The petition for review is denied.

GUERRERO

Chief Justice

