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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAYNE J. CORNS,

Defendant and Appellant.

A146657

(San Francisco City & County
Super. Ct. No. 14027046)

Following defendant's arrest for assault with a deadly weapon and making criminal threats, the San Francisco District Attorney declined to file formal charges against him. Thereafter, defendant filed a petition for finding of factual innocence. The trial court denied the petition because it was not ripe for resolution. We affirm.

FACTS AND PROCEDURE

We begin by summarizing the factual and procedural history leading up to the denial of defendant's petition for finding of factual innocence filed pursuant to Penal Code section 851.8.¹

On October 4, 2014, a San Francisco police officer responded to a report of an assault. The victim told the officer that defendant, a former neighbor, approached him holding a baseball bat over his head. As defendant approached he stated, "You are going to die Bitch," and swung the bat towards the victim's head, striking the victim on the right hand as he tried to defend himself. Over a week later, on October 13, defendant was

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

arrested in Antioch by San Francisco police officers for “aggravated assault” (§ 245, subd. (a)(1)) and for making criminal threats (§ 422). According to defendant, no formal charges were filed against him.

Because the district attorney failed to file a criminal complaint, on May 28, 2015, defendant filed a “Notice of Petition & Petition for Finding of Factual Innocence” (petition) pursuant section 851.8. Defendant maintained the petition was timely under section 851.8, subdivision *l* because it was filed within two years from the date of the arrest.² While the assistant district attorney (DA) agreed the petition was timely, she objected that it was not yet “ripe” for a ruling because the statute of limitations for a felony is three years.³ As the arrest date for the felonies was October 13, 2014, the DA argued the petition could not be heard until after the statute of limitations expired on October 12, 2017, explaining that to grant the petition now “would interfere with the prosecution’s authority to charge a case.”

Relying on section 851.8, subdivision (b), the trial court agreed with the DA and found the petition was not ripe for resolution because a petition for factual innocence in a case “like this in which no charges were filed, the motion cannot be heard until 60 days after the statute of limitations has run or it may not be brought before the court until the statute of limitations has run.”

DISCUSSION

After defendant appealed, counsel was appointed to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, setting forth a statement of the case and a summary of the facts, and requesting this court conduct an independent review of the record. Counsel has notified defendant he can file a

² Section 851.8, subdivision *l* provides in pertinent part that a petition for finding of factual innocence must be filed within two years of the “date of the arrest or filing of the accusatory pleading, whichever is later.”

³ Under section 801, “prosecution for an offense punishable by imprisonment in the state prison . . . shall be commenced within three years after commission of the offense.”

supplemental brief with the court. No supplemental brief has been received from defendant.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable error that would result in a disposition favorable to defendant.

Section 851.8, subdivision (a) provides that where a person has been arrested, but no accusatory pleading has been filed, as here, “the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest,” and a copy of the petition must be served on the prosecuting attorney. Upon determination that the person arrested is factually innocent, the law enforcement agency “shall, with the concurrence of the prosecuting attorney,” seal the arrest records and the petition for three years from the date of arrest and thereafter destroy the arrest records and the petition. (*Ibid.*)

Pursuant to section 851.8, subdivision (b), after the law enforcement agency and the prosecuting attorney receive the petition for finding of factual innocence, if the law enforcement agency and prosecuting attorney do not respond to the petition by accepting or denying it “within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed denied.”

We agree with the trial court that section 851.8, subdivision (b) must be understood as precluding any resolution of a petition for factual innocence until the three-year felony statute of limitations has run on the offenses in this matter. Otherwise, as the DA explained to the court, to allow an earlier ruling would interfere with the prosecution’s authority to charge defendant with felonies during the three-year statutory period. Though defendant’s counsel asserted in the trial court the felony statute of limitations did not apply to his client because defendant was, according to counsel, unlawfully arrested, we have found no authority supporting this assertion. Nor have we found evidence in the record of an unlawful arrest.

We also conclude defendant was ably represented by counsel throughout the proceedings. There is no indication in the record counsel provided ineffective assistance of counsel.

DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Humes, P.J.

Dondero, J.

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