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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. ESTEVAN ARREOLA, Defendant and Appellant.	F077546 (Super. Ct. No. CF84313300) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Gary D. Hoff, Judge.

Paul Couenhoven, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Franson, J. and DeSantos, J.

INTRODUCTION

Appellant Estevan Arreola was sentenced in 1985 on multiple counts, including murder with special circumstances. Arreola appealed his convictions, and in a partially published opinion, this court reversed the conviction on one count of attempted murder and affirmed the judgment in all other respects. (*People v. Arreola* (1986) 186 Cal.App.3d 1570, 1576 (*Arreola*).)[1]

Arreola was before the superior court on May 18, 2018, for resentencing. On May 23, 2018, Arreola appealed from the resentencing. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

The facts of the underlying offenses are not pertinent to this appeal. In 1984, Arreola was charged with two counts of first degree murder, with a multiple murder special allegation, and five counts of attempted murder, with personal use of a firearm enhancements. The jury found Arreola guilty of all charges and found the enhancements and special allegation true. (*Arreola*, *supra*, 186 Cal.App.3d at p. 1571.)

On January 14, 1985, Arreola was sentenced after having been convicted of seven felony counts. (*Arreola*, *supra*, 186 Cal.App.3d at pp. 1571-1572.) For the count 1 murder with special circumstances conviction, he was sentenced to life without the possibility of parole. For the count 2 murder with special circumstances conviction, the term was stayed. The trial court stayed the two Penal Code[2] section 12022.5 enhancements appended to counts 1 and 2. For the count 3 attempted murder conviction, Arreola was sentenced to a term of nine years, plus two years consecutive for the section 12022.5 enhancement appended to this count. On each of counts 4 through 7, the trial court imposed a consecutive term of one-third the midterm, consisting of two years

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1 The full opinion is at pages 5 through 22 of the clerk's transcript on appeal.

2 References to code sections are to the Penal Code.

and four months for each count, to be served consecutively to the term imposed for count 3. The section 12022.5 enhancements appended to counts 4 through 7 were stayed. (*Arreola*, *supra*, 186 Cal.App.3d at p. 1572.)

Arreola appealed his convictions, raising multiple issues including whether evidence was properly admitted; asserting error in application of the transferred intent doctrine; instructional error; violation of equal protection; and cruel and unusual punishment. (*Arreola*, *supra*, 186 Cal.App.3d at pp. 1574-1576.) This court reversed the count 3 conviction and affirmed the judgment in all other respects. (*Id.* at p. 1576.)

After our opinion was filed, remittitur issued on February 23, 1987. As the superior court stated in its March 21, 2018, order setting the matter on calendar for resentencing:

> "Unfortunately, the Court failed to take any action to address the reversal of the conviction on Count 3, including whether a retrial was possible and further failed to resentence defendant based on the reversal if no retrial occurred."

The superior court rectified the oversight and set the matter on calendar for a resentencing hearing on May 18, 2018. A transportation order was issued so Arreola could be present at the resentencing.

At the resentencing, Arreola stated, "I just don't feel I'm guilty of anything." Defense counsel asked the superior court to dismiss the charges and enhancements. The motion was denied, but the superior court did dismiss the count 3 conviction, which had been reversed on appeal, and the enhancement appended to count 3. The superior court imposed a restitution fine in the amount of $5,000, the original amount, and noted that Arreola had the ability to earn some income while serving time in prison. Arreola had been awarded 317 days of custody credit and 158 days of conduct credit, for a total of 475 days of credit, at his original sentencing hearing and the superior court awarded the same number of days of custody and conduct credit at resentencing.

The superior court selected count 4 as the principal term and imposed the aggravated term of nine years for this conviction; a two-year consecutive term was imposed for the section 12022.5 enhancement appended to this count. As to counts 5, 6, and 7 the superior imposed a consecutive term of one-third the midterm for each count, which was calculated as two years and four months for each count. The superior court exercised its discretion to dismiss the section 12022.5 enhancements appended to counts 5, 6, and 7.

For the count 1 murder conviction with a special circumstance, the superior court imposed a term of life without the possibility of parole and dismissed the section 12022.5 enhancement appended to this count. The superior court dismissed the section 12022.5 enhancement appended to count 2; imposed a term of life without the possibility of parole for the count 2 murder conviction; and stayed the life term on count 2.

Arreola received a sentence of life without parole, with a consecutive 18-year determinate sentence, at resentencing. A timely notice of appeal from the resentencing was filed on May 23, 2018.

DISCUSSION

Appellate counsel was appointed on July 11, 2018. On July 17, 2018, appellate counsel sent a letter pursuant to *People v. Fares* (1993) 16 Cal.App.4th 954, asking the superior court to correct the award of custody credit pursuant to *People v. Buckhalter* (2001) 26 Cal.4th 20, 37. Counsel's letter asserted that Arreola should have been awarded 12,494 days of custody credit at resentencing.

In response to counsel's *Fares* letter, on July 27, 2018, the superior court prepared and disseminated an amended abstract of judgment, awarding 12,494 days of custody credit.

On September 10, 2018, counsel filed a *Wende* brief. (*Wende, supra,* 25 Cal.3d 436.) That same day, this court issued its letter inviting Arreola to submit a supplemental letter brief. On September 25, 2018, Arreola's supplemental letter brief was filed.

On October 11, 2018, Arreola filed a motion in this court, seeking to obtain discovery pursuant to section 1054.9. On October 23, 2018, this court issued its order denying Arreola's discovery motion.

In his letter brief, Arreola again asserts that he is not guilty of the charges and raises issues challenging the underlying convictions, specifically those issues he raised in his first appeal and which were decided adversely to him. (*Arreola*, *supra*, 186 Cal.App.3d at pp. 1574-1576.)

Arreola is precluded from challenging his underlying convictions on an appeal from a resentencing where, as here, the convictions were affirmed in the first appeal. (*People v. Deere* (1991) 53 Cal.3d 705, 713.) Only issues pertaining to resentencing may be raised. (*Ibid.*)

After an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.