Filed 12/15/20 P. v. Morrison CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>WARREN OLEG MORRISON, JR.,<br>Defendant and Appellant. | A158705<br><br>(San Mateo County<br>Super. Ct. No. SF400896A) |

In this appeal from a resentencing proceeding, appointed counsel for Warren Oleg Morrison, Jr. has filed a brief asking this court to review the record to determine whether there are arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Having found none, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

In 2015, Morrison shot and killed Jarmal Magee during an argument. A jury convicted Morrison of first degree murder and found true an enhancement that he personally and intentionally discharged a firearm

[1] We incorporate by reference our opinions in Morrison's prior appeals, *People v. Morrison* (2019) 34 Cal.App.5th 217 and *People v. Morrison* (April 11, 2019, A152440) [nonpub. opn.]. We deny as unnecessary Morrison's request for judicial notice of the transcripts in those appeals.

causing death (Pen. Code, §§ 187, subd. (a), 12022.53, subd. (d), statutory references are to the Penal Code). In 2017, the trial court sentenced Morrison to 50 years to life in state prison, which included a mandatory 25-year-to-life sentence on the firearm enhancement. Later, the trial court recalled the sentence, exercised its discretion under newly amended section 12022.53, subdivision (h), and declined to strike the enhancement.

Morrison appealed. We affirmed the conviction but remanded for resentencing, for the trial court to consider imposing a "lesser firearm enhancement" pursuant to section 12022.53, subdivisions (b) or (c). (*People v. Morrison, supra,* 34 Cal.App.5th at pp. 220, 222.)

At the resentencing hearing, the trial court acknowledged it had discretion, under *People v. Morrison*, to reduce the enhancement. The court declined to do so and explained why the section 12022.53, subdivision (d) enhancement was appropriate. The court reimposed the original sentence.

DISCUSSION

Morrison's appointed counsel filed a *Wende* brief and notified Morrison he had a right to file a supplemental brief on his own behalf. No supplemental brief has been filed. Our review is limited to proceedings conducted on remand, e.g. the resentencing hearing. We have reviewed the post-remand record pursuant to *Wende* and find no reasonably arguable appellate issue.

DISPOSITION

The judgment is affirmed without prejudice to Morrison's filing a motion for a "*Franklin* proceeding" (*People v. Franklin* (2016) 63 Cal.4th 261) in the trial court when his judgment becomes final. (See *People v. Medrano* (2019) 40 Cal.App.5th 961, 968; *In re Cook* (2019) 7 Cal.5th 439, 458.)

Reardon, J.*

WE CONCUR:

Needham, Acting P. J.

Burns, J.

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* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.