Filed 4/26/19 P. v. Ambriz CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MARCO ANTONIO AMBRIZ, Defendant and Appellant.	F075410 (Super. Ct. No. VHC347070) **OPINION**

APPEAL from a judgment of the Superior Court of Tulare County. Nathan G. Leedy, Judge.

Michael Satris, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Marcia A. Fay, Deputy Attorneys General, for Plaintiff and Respondent.

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STATEMENT OF THE CASE

On August 31, 2010, a jury convicted defendant Marco Antonio Ambriz (and two others) of shooting at an inhabited dwelling (Pen. Code, § 246), shooting from a motor vehicle (*id*., former § 12034, subd. (c), now *id*., § 26100, subd. (c)), eight counts of assault with a firearm (*id*., § 245, subd. (a)(2), (4)) and receipt of stolen property (*id*., § 496, subd. (a)). The jury also found that the crimes were committed for the benefit of a criminal street gang under Penal Code section 186.22, subdivision (b). Defendant was sentenced to a term of 15 years to life.

This court affirmed the judgment against defendant in an opinion filed April 6, 2012. The California Supreme Court denied review of that opinion on June 27, 2012.

On May 23, 2013, defendant filed a petition for habeas corpus in the California Supreme Court. On October 30, 2013, the high court denied the petition as follows:

> "The petition for writ of habeas corpus is denied as to claim 1 (A) without prejudice to any relief to which petitioner might be entitled after this court decides *People v. Prunty*, S210234. The petition is otherwise denied. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474; *In re Waltreus* (1965) 62 Cal.2d 218, 225; *In re Dixon* (1953) 41 Cal.2d 756, 759; *In re Swain* (1949) 34 Cal.2d 300, 304; *In re Lindley* (1947) 29 Cal.2d 709, 723.)"

On August 31, 2016, defendant filed a petition for writ of habeas corpus in this court, citing *People v. Prunty* (2015) 62 Cal.4th 59 (*Prunty*). On October 18, 2016, we denied the petition without prejudice for failing to file it initially in the court of original jurisdiction (i.e., the superior court).

On February 10, 2017, defendant filed a petition for writ of habeas corpus in Tulare County Superior Court, again relying largely on *Prunty*. The superior court denied the petition on February 24, 2017.

On March 8, 2017, defendant filed a motion to vacate the judgment denying his February 10 habeas petition. The superior court denied the motion on March 10, 2017. Defendant now purports to appeal from the March 10, 2017 order denying his motion.

STATEMENT OF FACTS[1]

Around 4:00 p.m. on June 23, 2008, the Valdovinos family was startled by six gunshots fired at their home. One of the shots hit the garage door and another shot hit near a cooler in the garage. The latter shot struck near a woman, who had been standing in the garage.

Peace officers with the sheriff's department happened to be in the area at the time. One of them observed a red four-door Honda Accord with "three Hispanic males, all with shaved heads" inside. Another deputy saw a vehicle matching the description and activated his sirens. A high-speed chase ensued. Defendant threw a .357 revolver with six dispensed casings out of the window. Eventually, the vehicle stopped. Gunshot residue was found on the exterior of the front passenger door and the headliner of the rear seat.

DISCUSSION

The Attorney General requests that we dismiss this appeal because the challenged order is not appealable. We agree. Defendant improperly seeks review of a habeas denial by means of an appeal.

Here, defendant filed a petition for habeas corpus, which was denied. Defendant then moved to vacate the denial, which was also denied. Now, defendant purports to appeal from the second denial. However, "[n]o appeal lies from an order denying a petition for writ of habeas corpus." (*Jackson v. Superior Court* (2010) 189 Cal.App.4th 1051, 1064; see *Walker v. Martin* (2011) 562 U.S. 307, 312.) This rule cannot be circumvented by moving to set aside the denial of the habeas petition, and then appealing the second denial. (Cf. *People v. Gallardo* (2000) 77 Cal.App.4th 971, 980-981.)

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[1] Because they are not material to our disposition of the case, "we provide only a brief summary of the facts of the underlying case." (*People v. Bell* (2010) 181 Cal.App.4th 1071, 1074, fn. 1.) The facts we do summarize are taken from our prior nonpublished opinion, *People v. Ambriz* (Apr. 6, 2012, F061401).

Defendant acknowledges the "question of appealability," but observes this court has discretion to treat a purported appeal as a petition for writ of habeas corpus.[2] We decline to exercise our discretion in the requested manner. Defendant's habeas petition in superior court asserted there is insufficient evidence to support the judgment. In support of the petition, defendant provided less than 20 pages of reporter's transcript. Even assuming for present purposes that a habeas petition can be used to challenge the sufficiency of the evidence in light of *Prunty*, "it would be incumbent upon petitioner to present a complete record of such evidence." (*In re Gutierrez* (1934) 1 Cal.App.2d 281, 285, disapproved on other grounds by *In re McInturff* (1951) 37 Cal.2d 876, 881-882.) That was not done here.[3]

DISPOSITION

The appeal is dismissed without prejudice to the filing in this court of a properly supported petition for writ of habeas corpus.

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DETJEN, J.

WE CONCUR:

_____
POOCHIGIAN, Acting P.J.

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PEÑA, J.

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[2] The Attorney General opposes this request.

[3] Given our conclusion, we do not address the procedural or substantive merit of a *Prunty* issue now being raised by defendant in a petition for writ of habeas corpus.