

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION SIX

People v. Arreguin

2d Crim. No. B304838 · No. B304838 · Decided March 9, 2023

SUMMARY

The California Court of Appeal reversed the denial of Jose Arreguin's petition for resentencing under Penal Code section 1172.6. Applying *People v. Strong*, the court held that a felony-murder special-circumstance finding made before *People v. Banks* and *People v. Clark* did not preclude Arreguin from establishing prima facie eligibility and obtaining an evidentiary hearing. A concurring opinion agreed that reversal was compelled by *Strong* but argued that the error was harmless on the record.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Six
WRITING FOR THE COURT	Gilbert, P. J.; Baltodano, J.; Yegan, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Six
DECIDED	March 9, 2023
DOCKET	B304838
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Arreguin appealed an order of the Ventura County Superior Court denying his petition for resentencing under former Penal Code section 1170.95, now section 1172.6.
STANDARD OF REVIEW	The opinion does not expressly identify a standard of review. It reviews the superior court's denial of a section 1172.6 resentencing petition for legal error.
PRECEDENTIAL VALUE	Published and certified for publication
PARTIES	Jose Arreguin v. The People

TOPICS

- state post-conviction relief
- sentence modification
- sentencing
- appellate procedure
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a felony-murder special-circumstance finding made before *People v. Banks* and *People v. Clark* categorically renders a petitioner ineligible for resentencing under Penal Code section 1172.6.
2. Whether the superior court erred by summarily denying Arreguin's section 1172.6 petition without issuing an order to show cause and conducting an evidentiary hearing.

HOLDINGS

1. A felony-murder special-circumstance finding made before *People v. Banks* and *People v. Clark* does not, by itself, preclude a petitioner from making a prima facie showing of eligibility for relief under Penal Code section 1172.6.
2. When a section 1172.6 petitioner has a pre-Banks and pre-Clark special-circumstance finding that is not otherwise conclusive of ineligibility, the court must issue an order to show cause and conduct an evidentiary hearing rather than summarily deny the petition.

KEY QUOTATIONS

“Findings issued by a jury before Banks and Clark are not preclusive and do not preclude a defendant from making out a prima facie case for relief.” (at 3)

“In sum, Strong held that a pre-Banks and pre-Clark special circumstance finding does not warrant summary denial of a section 1172.6 petition. Instead, the matter must proceed to an evidentiary hearing.” (at 4)

FACTUAL BACKGROUND

In 1992, Richard Schell was confronted while sitting in his truck with rent collections by several men attempting to rob him. Gilbert Martinez approached with a .45-caliber handgun, David Soto broke the passenger-side window, and Arreguin stood behind Martinez holding his jacket; when Schell attempted to escape, Martinez shot and killed him. Evidence showed that Arreguin immediately before the shooting urged Martinez, "Shoot 'im, shoot 'im," and later admitted doing so, although at trial he denied participating in or knowing about the robbery and denied making the statement.

PROCEDURAL HISTORY

Arreguin was convicted in 1993 of first degree murder and attempted robbery, with a felony-murder special-circumstance finding and a firearm enhancement, and was sentenced to life without parole plus one year. After section 1172.6 became effective, he filed a resentencing petition alleging that his murder conviction rested on felony murder or the natural and probable consequences doctrine. The superior court denied the petition based on its determination that Arreguin was a major participant who acted with reckless indifference to human life, without issuing an order to show cause or conducting an evidentiary hearing. The Court of Appeal reversed and remanded for those proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The superior court must appoint counsel, issue an order to show cause, and conduct an evidentiary hearing pursuant to Penal Code section 1172.6.

CASES CITED

- People v. Strong, 13 Cal. 5th 698 (2022)
- People v. Clark, 63 Cal. 4th 522 (2016)
- People v. Banks, 61 Cal. 4th 788 (2015)
- People v. Arreguin (Dec. 12, 1994, B077312) [nonpub. opn.]
- Auto Equity Sales, Inc. v. Superior Court, 57 Cal. 2d 450, 457 (1962)
- People v. Musante, 102 Cal. App. 3d 156, 159 (1980) (Gardner, P.J., concurring)

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