

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION THREE

People v. Rodriguez

People v. Rodriguez · No. B332704 · Decided April 7, 2025

SUMMARY

The California Court of Appeal affirmed an order denying Jose Gelito Rodriguez’s petition for resentencing under Penal Code section 1172.6. The court held that statements Rodriguez made in a 2011 parole letter and a 2016 parole-related risk assessment were admissible and supported the finding that he was the actual killer, making him ineligible for resentencing.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Three
WRITING FOR THE COURT	Adams, J.; Edmon, P. J.; Egerton, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Three
DECIDED	April 7, 2025
DOCKET	B332704
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Los Angeles County Superior Court denying Rodriguez's petition for resentencing under Penal Code section 1172.6 after an evidentiary hearing.
STANDARD OF REVIEW	The opinion does not expressly identify a separate standard of appellate review. It reviews the trial court's evidentiary rulings and its determination that Rodriguez was the actual killer in the section 1172.6 evidentiary proceeding.
PRECEDENTIAL VALUE	Published and certified for publication
PARTIES	Jose Gelito Rodriguez v. The People

TOPICS

- sentence modification
- state post-conviction relief
- evidence
- fifth amendment
- appellate procedure

PRACTICE AREAS

- California criminal law
- post-conviction resentencing
- evidence
- constitutional criminal procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by admitting Rodriguez's 2011 letter to the Board of Parole Hearings and his statements recorded in a 2016 comprehensive risk assessment during the Penal Code section 1172.6 evidentiary hearing.
2. Whether using Rodriguez's parole-related statements in the section 1172.6 proceeding violated his privilege against self-incrimination or due process because the statements were allegedly compelled or involuntary.
3. Whether Rodriguez was entitled to resentencing under section 1172.6 after the trial court found beyond a reasonable doubt that he was the actual killer.

HOLDINGS

1. Statements a defendant made in a parole letter and parole-related risk assessment may be admitted in a Penal Code section 1172.6, subdivision (d)(3), evidentiary hearing when the statements are otherwise admissible under the Evidence Code.
2. A defendant who was the actual killer is ineligible for resentencing under Penal Code section 1172.6 because Senate Bill No. 1437 did not invalidate murder convictions based on a theory that the defendant was the sole and actual killer.

KEY QUOTATIONS

“Rather, it is a postconviction proceeding ‘due to the Legislature’s inclusion of section 1170.95 in Senate Bill No. 1437 . . . , [as] an “act of lenity” [citation], allowing for the retroactive application of the new law governing accomplice liability for felony murder [citation], for defendants already serving valid sentences for murder.’” (11-12)

“Thus, “[b]ecause a sentence modification under section 1170.95 is an act of lenity and not a criminal trial, the wrongful admission of evidence does not implicate defendant’s constitutional rights under the Fifth Amendment.”” (12)

““Standing alone, a defendant’s right to speak on their own behalf at a parole hearing cannot support a conclusion that parole hearing testimony was compelled or involuntary.”” (13)

FACTUAL BACKGROUND

In 1982, Rodriguez and three others were traveling in a car on Hollywood Boulevard when shots fired from the car injured Don Hill and killed Kirk Bickford. Rodriguez pleaded guilty to second degree murder in 1984 under an agreement dismissing firearm enhancements. In later parole-related proceedings, Rodriguez made statements accepting responsibility for Bickford's death and described himself as the shooter. At the section 1172.6 evidentiary hearing, the trial court relied on those statements and found Rodriguez was the actual killer.

PROCEDURAL HISTORY

Rodriguez pleaded guilty to second degree murder in 1984 and received a sentence of 15 years to life. In 2020, he petitioned for resentencing under Penal Code section 1172.6; the People stipulated that he had made a prima

facie showing, and the trial court issued an order to show cause. After an admissibility hearing, the court admitted Rodriguez's 2011 parole letter and statements recorded in a 2016 parole risk assessment. Following an evidentiary hearing, the court found Rodriguez was the actual killer and denied resentencing relief. The Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Strong (2022) 13 Cal.5th 698
- People v. Lewis (2021) 11 Cal.5th 952
- People v. Gentile (2020) 10 Cal.5th 830
- People v. Bodely (2023) 95 Cal.App.5th 1193
- People v. Njoku (2023) 95 Cal.App.5th 27
- People v. Clements (2022) 75 Cal.App.5th 276
- People v. Myles (2021) 69 Cal.App.5th 688
- People v. Mitchell (2022) 81 Cal.App.5th 575
- People v. Duran (2022) 84 Cal.App.5th 920
- People v. Anderson (2022) 78 Cal.App.5th 81
- People v. Coleman (1975) 13 Cal.3d 867
- People v. Zavala (2024) 105 Cal.App.5th 366
- People v. Williams (2020) 57 Cal.App.5th 652
- People v. Anthony (2019) 32 Cal.App.5th 1102
- People v. Martinez (2019) 31 Cal.App.5th 719
- People v. Dennis (1986) 177 Cal.App.3d 863
- People v. Schader (1969) 71 Cal.2d 761
- Ramona R. v. Superior Court (1985) 37 Cal.3d 802