

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION SEVEN

People v. Nino

People v. Nino · No. B333606 · Decided June 4, 2025

SUMMARY

The California Court of Appeal reversed the denial of Jesus Izaguirre Nino’s petition for resentencing under Penal Code section 1172.6. The court held that although the preliminary hearing record showed Nino was the actual killer, it did not conclusively establish his ineligibility because he could potentially have been convicted of second degree felony murder under a now-invalid imputed-malice theory. The court directed the superior court to issue an order to show cause and hold an evidentiary hearing.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Seven
WRITING FOR THE COURT	Feuer, J.; Martinez, P. J.; Segal, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Seven
DECIDED	June 4, 2025
DOCKET	B333606
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order denying a petition for resentencing under California Penal Code section 1172.6 at the prima facie review stage.
STANDARD OF REVIEW	De novo review applies to denial of a section 1172.6 petition at the prima facie stage, including whether the record of conviction establishes as a matter of law that the petitioner is ineligible for resentencing; statutory interpretation is also reviewed de novo.
PRECEDENTIAL VALUE	Published and certified for publication
PARTIES	Jesus Izaguirre Nino v. The People

TOPICS

- state post-conviction relief
- sentence modification
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

California criminal law

post-conviction resentencing

felony murder

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether an actual killer who pleaded guilty to second degree murder may nevertheless be eligible for resentencing under Penal Code section 1172.6 if the conviction could have rested on the now-invalid theory of second degree felony murder based on imputed malice.
2. Whether the preliminary hearing transcript and record of conviction conclusively established at the prima facie stage that Nino was convicted under a still-valid theory and was therefore ineligible for relief.
3. Whether the superior court erred by denying the petition without issuing an order to show cause and conducting an evidentiary hearing.

HOLDINGS

1. An actual killer is not categorically ineligible for resentencing under Penal Code section 1172.6. An actual killer may be eligible if, at the time of conviction, the defendant could have been convicted of second degree felony murder under the now-invalid theory that malice was imputed based solely on participation in an inherently dangerous felony.
2. The preliminary hearing transcript and record of conviction did not conclusively establish that Nino was convicted under a still-valid theory of murder. Because the record did not foreclose the possibility of second degree felony murder based on imputed malice, Nino made a prima facie showing of entitlement to relief.
3. The superior court erred by denying the petition at the prima facie stage. On remand, it must issue an order to show cause and conduct an evidentiary hearing under Penal Code section 1172.6, subdivision (d).

KEY QUOTATIONS

“But Section 188(a)(3) does not carve out any exception for second degree felony murder, which, like first degree felony murder, is based on an imputed malice theory of liability.” (at 10)

“Under section 188(a)(3), a defendant must possess malice aforethought to be convicted of second degree murder, eliminating both the natural and probable consequences doctrine and second degree felony murder, regardless of whether the defendant is the actual killer or an accomplice.” (at 15)

“Because the preliminary hearing transcript and record of conviction do not conclusively establish that Nino’s “conviction was under a still-valid theory” that rendered him ineligible for relief as a matter of law, Nino made a prima facie showing of entitlement to relief.” (at 19)

FACTUAL BACKGROUND

In 1989, Nino encountered Fernando Avalos, a member of a rival gang, while driving near a Los Angeles high school. After a verbal exchange, Nino pointed a revolver at Avalos and fired from approximately 22 feet, killing him; witnesses testified Nino acted alone and that Avalos was unarmed and made no threatening movement. Nino later stated that he intended to scare Avalos rather than kill him.

PROCEDURAL HISTORY

Nino pleaded guilty in 1991 to second degree murder and admitted personally using a firearm. In 2022 he petitioned for resentencing under Penal Code section 1172.6. The superior court denied the petition without issuing an order to show cause, concluding the preliminary hearing transcript established that Nino was the actual killer and therefore ineligible for relief. Nino timely appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order denying Nino's section 1172.6 petition. The superior court must issue an order to show cause and conduct further proceedings, including an evidentiary hearing, in accordance with Penal Code section 1172.6, subdivision (d).

CASES CITED

- People v. Patton (2025) 17 Cal.5th 549
- People v. Curiel (2023) 15 Cal.5th 443
- People v. Strong (2022) 13 Cal.5th 698
- People v. Lewis (2021) 11 Cal.5th 952
- People v. Chun (2009) 45 Cal.4th 1172
- People v. DeHuff (2021) 63 Cal.App.5th 428
- In re Ferrell (2023) 14 Cal.5th 593
- People v. Gentile (2020) 10 Cal.5th 830
- People v. Antonelli (2025) 17 Cal.5th 719
- People v. Lee (2023) 95 Cal.App.5th 1164
- People v. Ireland (1969) 70 Cal.2d 522
- People v. Jackson (2025) 110 Cal.App.5th 128
- People v. Flores (2023) 96 Cal.App.5th 1164
- People v. Delgadillo (2022) 14 Cal.5th 216
- People v. Muhammad (2024) 107 Cal.App.5th 268
- People v. Pickett (2023) 93 Cal.App.5th 982
- People v. Mares (2024) 99 Cal.App.5th 1158
- People v. Concha (2009) 47 Cal.4th 653

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