

DEATH PENALTY

No. S118775 - CAPITAL CASE

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

JAVANCE MICKEY WILSON,
Defendant and Appellant.

San Bernardino County Superior Court, Case No. FVA12968
The Honorable James A. Edwards, Judge

RESPONDENT'S THIRD SUPPLEMENTAL BRIEF

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FACTUAL AND PROCEDURAL BACKGROUND

Almost exactly 24 years ago, Wilson robbed and brutally murdered two taxicab drivers. Wilson accomplished the murders in identical fashion: by soliciting the services of the drivers, only to lure them to remote locations where he robbed them before carrying out their executions. During yet another attempt, the gun malfunctioned, and despite Wilson pulling the trigger with the gun inside the driver's mouth, it did not fire, and the driver was spared. In 2003, Wilson was convicted of these crimes and others, and was sentenced to death—entitling him to the instant automatic appeal. Ten years and 26 extension requests later, Wilson filed his opening brief. Fourteen months later, the People filed the respondent's brief and Wilson's reply was filed approximately one year after that—thus completing the parties' initial briefing in 2017.

Since then, there have been several rounds of supplemental briefing. In February 2023, Wilson filed a motion seeking to stay the appeal and remand the matter to the trial court to permit him to explore claims under California's Racial Justice Act (RJA) in the lower court. (Appellant's Motion to Stay 13-25 (Mtn. to Stay); see also Pen. Code¹, § 745.) In the opposition to that motion (filed in March 2023), respondent argued that Wilson had failed to show good cause warranting a stay. (Opp. to Mtn. to Stay 5-7, 15.) In support of this, respondent noted that the RJA

¹ Subsequent statutory references are to the Penal Code, unless otherwise indicated.

provided specific procedural mechanisms to seek relief—namely, for post-judgment defendants like Wilson, it authorized pursuit of these claims via a petition for writ of habeas corpus, not via a stay of a pending appeal and a limited remand. (*Id.* at pp. 7, 9-10, 13-14.) Respondent argued that the Legislature’s omission of an explicit authorization to raise RJA claims on direct appeal—something it had done in other situations—further demonstrated the Legislature’s intent to keep RJA proceedings and appellate proceedings separate and independent of each other. (*Id.* at pp. 9-10, 11-13.)

After the parties completed the briefing regarding Wilson’s request to stay this appeal, the Legislature passed Assembly Bill No. 1118 (AB 1118), which amended subdivision (b) of section 745, such that it now provides:

A defendant may file a motion pursuant to this section, or a petition for writ of habeas corpus or a motion under Section 1473.7, in a court of competent jurisdiction, alleging a violation of subdivision (a). *For [RJA] claims based on the trial record, a defendant may raise a claim alleging a violation of subdivision (a) on direct appeal from the conviction or sentence. The defendant may also move to stay the appeal and request remand to the superior court to file a motion pursuant to this section. . .*

(Pen. Code, § 745, subd. (b), italics added; Assem. Bill No. 1118 (2023-2024 Reg. Sess.) § 1, eff. Jan. 1, 2024.)

On December 6, 2023, this Court directed the parties to file supplemental briefs on the following issue: “What is the effect, if any, of the recent amendment to Penal Code section 745, subdivision (b) on the issues in this case? (Stats. 2023, ch. 464, § 1.)”

In response to that order, Wilson filed his third supplemental opening brief on December 28, 2023. There, he reiterates his request for a stay, arguing the recent amendment to the RJA dictates that this Court should stay the appeal and remand the matter to the trial court. In the alternative, should this Court determine a stay is unnecessary and proceed to resolve the issues raised on appeal, Wilson requests the court still order the matter remanded to the superior court for determination of the RJA issues, citing this Court's general authority to issue such limited remands when it is "just under the circumstances." (3rd Supp. AOB 6-7, 19-20, citing § 1260.)

ARGUMENT

I. THERE IS NO GOOD CAUSE FOR A STAY OF THESE PROCEEDINGS AND A LIMITED REMAND BECAUSE WILSON CAN PURSUE HIS CLAIMS UNDER THE RJA IN THE SUPERIOR COURT BY WAY OF A CAPITAL HABEAS PETITION

Wilson contends that a recent amendment to section 745 requires this Court to stay his long-pending appeal and remand the matter to the trial court so that he can pursue a claim under the RJA in the lower court. (Supp. AOB #3, at pp. 6-9.) In the alternative, Wilson argues that even if this Court denies his request for a stay of his appeal, it should nonetheless order the matter remanded to the trial court within its disposition of this direct appeal. (3rd Supp. AOB 19-20.) Respondent opposes both requests. As set forth in additional detail below, Wilson has not established good cause to justify injecting further delay into the resolution of his direct appeal. In addition, the sole and exclusive means by which Wilson may pursue his claims under the RJA in the trial court is set forth in section 1509: he must file a petition

for writ of habeas corpus. For these reasons, Wilson's requests should be rejected.

AB 1118 amended the language of section 745, subdivision (b), in two ways: (1) by permitting defendants to raise record-based RJA claims for the first time "on direct appeal from the conviction or sentence"; and (2) noting that a defendant "may also move to stay the appeal and request remand to the superior court." The first amendment resolves any dispute regarding whether defendants may raise record-based RJA claims on direct appeal, and leaves no question that such claims may be raised on direct appeal. Here, however, Wilson does not seek to raise a record-based RJA claim. Instead, Wilson seeks to raise two distinct RJA claims, both of which he insists require further development of the record. (See 3rd Supp. AOB 7, 9, 11, 13, 19; Mtn. for Stay 5, 17-18.) Given that Wilson is not seeking to raise a record-based claim on direct appeal, that aspect of AB 1118's amendment of section 745 is not implicated in the present case.

The second amendment to section 745 made by AB 1118 provides that defendants may seek a stay of a pending appeal and a limited remand to pursue RJA claims. This amendment has no material impact on this case because Wilson has already filed a motion seeking both a stay and a remand. The Legislature's intent to permit defendants *access* to the stay and remand procedure does not mandate that courts considering such requests *grant* them. Nor does the amendment (or anything else in the RJA) alter or change the standard by which courts assess such requests. For all of the reasons detailed here and in

respondent's initial opposition to Wilson's motion, he cannot make the required showing of good cause to further delay these proceedings.

Courts have the “inherent authority and responsibility to fairly and efficiently administer all of the judicial proceedings that are pending before it[.]” (*People v. Engram* (2010) 50 Cal.4th 1131, 1146.) This includes the power “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” (*Ibid.*, quoting *Landis v. North American Co.* (1936) 299 U.S. 248, 254–255; see *Briggs v. Brown* (2017) 3 Cal.5th 808, 851-853.) While a case is on review, upon a showing of good cause, appellate courts have discretion to grant a stay of the appeal and order the case remanded to the trial court for limited purposes. (*People v. Gentile* (2020) 10 Cal.5th 803, 858; see also § 1260.) When deciding whether to stay proceedings, a court should consider the “particular circumstances and competing interests involved.” (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 480.) The decision is fundamentally about balancing the interests of the court, the parties, and the public, including—in a criminal case—the victims. (See *ibid.*; *People ex rel. Harris* (2013) 214 Cal.App.4th 921, 951-952; *Hernandez v. Superior Court* (2004) 115 Cal.App.4th 1242, 1246-1247.)

Here, Wilson's good-cause analysis begins and ends with his belief that he has established “a plausible factual foundation” to show the RJA was violated in this case. (3rd Supp. AOB 13-18.) But the strength or weakness of his underlying factual

allegations has little bearing on whether the balance of the competing interests weighs in favor of granting or denying a stay or a limited remand. Both the People and the victims' families have a significant interest in the most efficient resolution of this case consistent with a just outcome. (Cal. Const., art. I, § 28, subd. (b)(9) [crime victims have a constitutional right to a “prompt and final conclusion of the case and any related post-judgment proceedings”]; Cal. Const., art. I, § 29 [“In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial”]; see Cal. Const., art. I, § 28, subd. (a)(5) [“Lengthy appeals and other post-judgment proceedings that challenge criminal convictions, . . . and the ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong the suffering of crime victims for many years after the crimes themselves have been perpetrated”]; *In re Reno* (2012) 55 Cal.4th 428, 451 [noting “society’s legitimate interest in the finality of its criminal judgments”].) Wilson committed these crimes 24 years ago, and this appeal has been pending in this Court for over two decades. The additional delay that a stay would cause weighs strongly against Wilson’s request. (See *Bains, supra*, 172 Cal.App.4th at p. 486 [“the interests of both the general public and the trial court in expeditiously dispensing justice weigh[] against further delaying the proceedings”].)

Additionally, because this case is fully briefed and ready to be argued, a stay would frustrate rather than promote judicial efficiency. (Opp. to Mtn. to Stay 6-7, 10-11, 14-15.) As noted, this

appeal has been pending in this Court for two decades and has been fully briefed for six years. More than a year ago, this Court notified the parties that it was prepared to schedule the oral argument. Wilson contends a stay could preserve judicial resources by obviating the need for this Court to decide issues that may become moot if he is successful in pursuing his RJA claims. (Mtn. to Stay 21-22.) He is mistaken. Because this case is already fully briefed and prepared for oral argument, many of the resources necessary to resolve Wilson's appellate claims have already been expended. More likely, granting a stay at this juncture would necessitate duplicating those efforts at some unknown point in the future when the case returns to this Court after the RJA proceedings are completed in the superior court.

Wilson's interest in staying these proceedings is only theoretically an interest in the timing of the presentation of these claims, because there is no dispute that he will be able to raise his claims directly in the trial court via a petition for writ of habeas corpus. (See generally § 1509; *In re Carpenter* (1995) 9 Cal.4th 634, 645-646 ["Nothing in article VI, section 10, or any other provision of law, denies the superior court of subject matter jurisdiction over habeas corpus proceedings when the challenged judgment is pending on appeal before an appellate court or even when, as here, a judgment of death is pending on automatic appeal before this court"].) Even if the superior court cannot consider Wilson's RJA claims while the appeal is pending, the distinction in the timing is a matter of mere months. As already explained, this case is fully briefed and ready to be argued. Once

argued, the opinion will issue within 90 days and become final 30 days later. (Cal. Const., art. VI, § 19; Cal. Rules of Court, rule 8.532.)

Next, Wilson contends a stay is necessary because although the RJA authorizes raising these claims in a habeas petition, the “standstill in the appointment of habeas counsel in capital cases renders a writ of habeas corpus an illusory remedy. . . .” (Mtn. to Stay 18; see also 3rd Supp. AOB 10 [“Mr. Wilson [should not be required] to wait for the appointment of habeas counsel”].) This argument is circuitous in that recognition of delay in one court does not justify injecting delay into a different court, and so this fails to establish good cause. Regardless, whether Wilson believes the available procedural mechanism is illusory it remains that he is statutorily required to raise his claim via a petition for writ of habeas corpus. As a collateral attack on his judgment, section 1509 precludes use of any other procedural mechanism. (§ 1509, subd. (a) [“This section applies to any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death. A writ of habeas corpus pursuant to this section is the *exclusive procedure for collateral attack on a judgment of death*”], italics added.)

For these reasons, the recent amendments to the RJA have no material bearing on this case. Wilson does not contend that either of his RJA claims are record-based such that he wishes to raise them in this appeal, and he has already made a request for a stay and a limited remand, so he does not rely on the amendment permitting such requests. AB 1118’s amendments

did not alter or change anything regarding the traditional standard used to determine whether to grant a stay or a limited remand and Wilson has failed to demonstrate good cause to justify either.

II. BECAUSE IT WOULD NOT BE JUST UNDER THE CIRCUMSTANCES, WILSON IS NOT ENTITLED TO HAVE THE MATTER REMANDED FOLLOWING RESOLUTION OF HIS APPEAL

As an alternative argument, Wilson requests a post-appeal limited remand under section 1260 so he can pursue his RJA claims in the superior court. (3rd Supp. AOB 19-20.) Wilson asserts that ordering a limited remand would be “just under the circumstances,” but he fails to explain how or why. (3rd Supp. AOB 11, quoting § 1260.) Once this Court decides Wilson’s appeal, there is no need to further address his potential RJA claims. At that point, Wilson can pursue his RJA claims through a habeas petition, as the statute itself contemplates, and there is no reason this Court should remain involved via a limited remand. Indeed, doing so could interfere with a voter initiative in an unconstitutional manner.

As noted above, section 1509—enacted as part of Proposition 66—provides that “[a] writ of habeas corpus pursuant to this section is the *exclusive* procedure for collateral attack on a judgment of death.” (§ 1509, subd. (a), italics added.) If this Court were to grant Wilson’s request for a post-affirmance limited remand under section 1260, it could constitute authorization for Wilson to pursue a collateral attack on his judgment through means other than those sanctioned in section 1509. Such authorization would directly contradict the will of the

California electorate. (See Cal. Const., art. II, § 10, subd. (c); *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571 [when determining whether legislation amends a voter initiative, courts ask the following question: “Whether the legislation prohibits what the initiative authorizes or authorizes what the initiative prohibits”].) Again, denying Wilson’s request for this limited remand does not, in any manner, impact his ability to raise, develop, and litigate his RJA claims in the superior court through a habeas petition—the procedural mechanism exclusively authorized by section 1509, and one that is included among the procedural mechanisms the Legislature has identified for resolution of RJA claims in post-judgment cases. (See § 745, subd. (b).) Wilson’s request for a limited remand after resolution of this appeal should be denied.

CONCLUSION

For the foregoing reasons, the recent amendments to the RJA do not materially impact this case and Wilson's request for a stay and a limited remand should still be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S THIRD SUPPLEMENTAL BRIEF** uses a 13 point Century Schoolbook font and contains 2625 words.

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