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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIKA L. MEYERS,

Defendant and Appellant.

A144541

(Humboldt County
Super. Ct. Nos. CR1101071 &
CR1205245)

After a jury trial defendant Mika L. Meyers was convicted of the felony offense of possessing heroin (Health & Saf. Code, § 11350, subd. (a)), and maintaining a place for the purpose of selling, giving away, or using a controlled substance (heroin) as a felony offense (§ 11366). In a bifurcated court proceeding, defendant admitted to allegations that he had four prior felony convictions (Pen. Code, § 1203, subd. (e)(4)), had served two separate prior prison terms (Pen. Code, § 667.5, subd. (b)), and had two prior strikes within the meaning of the Three Strikes law (Pen. Code, § 667, subds. (b) – (i)). After denying a motion to strike either or both prior strikes (Pen. Code, § 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497), the court sentenced defendant to state prison for an aggregate term of 27 years to life, consisting of concurrent terms of 25 years to life for each drug offense and consecutive terms of one year for each of the two prior prison terms. On defendant’s appeal, we affirmed the judgment in a two-one decision, in which Justice Pollak dissented in part on the ground that the matter should be remanded for resentencing pursuant to Penal Code sections 667 and 1170.12 as modified by the

voter's approval of Proposition 36 in November 2012. (*People v. Meyers* (Aug. 4, 2014, as modified, Aug. 15, 2014, A135489) [nonpub. opn.])

While defendant's appeal was pending he filed a "petition for writ of habeas corpus" and later filed related motions, seeking resentencing of his current felony drug offense convictions to an aggregate sentence of "no more than six years," pursuant to Penal Code sections 1170.126 (Proposition 36) and 1170.18 (Proposition 47). Defendant also filed a motion to further reduce his sentence by seeking reclassification of the current Health & Safety Code section 11366 felony offense as a misdemeanor pursuant to Penal Code section 17, subdivision (b).

On February 2, 2015, the trial court granted, in part, defendant's requested relief. Because of defendant's past criminal history, the court denied defendant's Penal Code section 17, subdivision (b), request to reclassify the Health & Safety Code section 11366 felony offense as a misdemeanor. However, having found defendant eligible for resentencing, the court imposed for the Health & Safety Code section 11366 felony offense the term of six years (upper term of three years, "doubled" for "prior strike convictions"¹; reduction of two prior prison terms convictions to misdemeanors), pursuant to Proposition 47. The court awarded defendant credit for time served against his six-year term. The court also reclassified the current Health & Safety Code section 11350 felony offense as a misdemeanor, pursuant to Proposition 47, and imposed a

¹ As noted, at the time of defendant's original sentencing, the trial court denied his motion to strike either or both prior strike convictions (Pen. Code, § 1385; *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th 497). In support of his resentencing request, defendant filed a motion to "vacate and dismiss" one prior strike conviction "in the interest of justice," pursuant to Penal Code section 1385. On January 7, 2015, the trial court commented that defendant's motion papers did not then demonstrate a basis for the court to grant the requested relief. The court did not actually rule on the motion but continued the matter to allow defendant's investigator additional time to subpoena a file from the Department of Corrections. Neither defendant nor the trial court thereafter explicitly mentioned the motion. In all events, it appears the trial court implicitly denied the motion by using the "prior strike convictions" to double the upper term of three years imposed on the Health & Safety Code section 11366 felony offense.

concurrent term of six months, thereby adding no additional time to defendant's sentence. Lastly, the court imposed the statutory minimum amount of fines and fees.

Defendant's appellate counsel has filed a brief asking us to independently review the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). As required under *People v. Kelly* (2006) 40 Cal.4th 106, 124, we affirmatively note that appellate counsel has informed us that he has written to defendant at his last known address advising him of his right to file a supplemental brief and defendant has not filed such a brief. We have independently examined the entire record in accordance with *Wende*, and agree with appellate counsel that there are no issues warranting further briefing. We see no legal error or abuse of discretion in the trial court's resentencing order.

DISPOSITION

The resentencing order is affirmed.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.