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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTHUR HOLLOWAY,

Defendant and Appellant.

B256059

(Los Angeles County
Super. Ct. No. SA019297)

APPEAL from an order of the Superior Court of Los Angeles County,
William C. Ryan, Judge. Affirmed.

Richard B. Lemmon, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Arthur Holloway petitioned for reduction of his indeterminate life sentence under the Three Strikes Reform Act, enacted by Proposition 36. (Pen. Code, § 1170.126.)¹ The trial court denied the petition on the ground that defendant’s current conviction for first degree burglary is a serious felony (§§ 459; 1192.7, subd. (c)(18)), which renders him ineligible for resentencing. Defendant timely appealed from the order of denial.²

We appointed counsel to represent defendant on appeal. After reviewing the record, counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441. On July 22, 2014, we directed counsel to send the record on appeal and a copy of the opening brief to defendant. On that date, we also notified defendant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. We have received no response from him.

¹ All further statutory references are to the Penal Code.

“Under the three strikes law (. . . §§ 667, subds .(b)–(i); 1170.12) as it existed prior to Proposition 36, a defendant convicted of two prior serious or violent felonies would be subject to a sentence of 25 years to life upon conviction of a third felony. Under the Act, however, a defendant convicted of two prior serious or violent felonies is subject to the 25-years-to-life sentence only if the third felony is *itself* a serious or violent felony. [Fn. omitted.] If the third felony is not a serious or violent felony, the defendant will receive a sentence as though the defendant had only one prior serious or violent felony conviction, and is therefore a second strike, rather than a third strike, offender. The Act also provides a means whereby prisoners currently serving sentences of 25 years to life for a third felony conviction which was not a serious or violent felony may seek court review of their indeterminate sentences and, under certain circumstances, obtain resentencing as if they had only one prior serious or violent felony conviction. According to the specific language of the Act, however, a current inmate is not entitled to resentencing if it would pose an unreasonable risk of danger to public safety.” (*People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1285–1286.)

² The trial court’s denial of a petition to recall a sentence pursuant to section 1170.126 is an appealable order under section 1237, subdivision (b). (*Teal v. Superior Court* (Nov. 6, 2014, S211708) __Cal.4th__ [2014 WL5739048].)

We have examined the entire record and determined that, because defendant's current conviction is for first degree burglary (§ 459), which is a serious felony (§ 1192.7, subd. (c)(18)), he is not eligible for a reduction of his sentence under section 1170.126. We are satisfied that defense counsel has fully complied with his responsibilities and that no arguable appellate issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.