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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS JAMES BRYLEY,

Defendant and Appellant.

B259408

(Los Angeles County Super. Ct.
No. LA056903)

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

California Appellate Project, Jonathan B. Steiner, Executive Director, and Richard B. Lennon, Staff Attorney, under appointments by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Dennis James Bryley is serving indeterminate terms in state prison under the three strikes law following his convictions for two counts of assault with a deadly weapon, a knife (Pen. Code, § 245, subd. (a)(1))¹ and one count of first degree robbery (§ 211). Defendant filed a petition for recall of sentence pursuant to section 1170.126, enacted in 2012 by the passage of Proposition 36. The trial court denied the petition because defendant's current serious felony conviction renders him ineligible for relief under section 1170.126, subdivision (e)(2).

Defendant filed a timely notice of appeal from the order denying relief under section 1170.126. This court appointed counsel for defendant. Appointed counsel filed a brief raising no issues, but requested this court to independently review the record for arguable contentions pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised by letter from this court of his right to file a supplemental brief within 30 days. No supplemental brief has been filed by defendant.

Our independent review of the record indicates that the trial court properly denied the petition to recall the sentence. The ameliorative provisions of Proposition 36 do not apply to a defendant currently sentenced to state prison for a serious felony. (§ 1170.126, subd. (e)(2).) Robbery is a serious felony. (§ 1192.7, subd. (c)(10).) Assault with a deadly weapon is also a serious felony. (*Id.* at subd. (c)(23).) Defendant is statutorily ineligible for resentencing.

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

We have conducted an independent review of the record on appeal. There are no arguable appellate contentions in this case. The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259.)

KRIEGLER, J.

We concur:

MOSK, Acting P. J.

GOODMAN, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.