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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY WATSON,

Defendant and Appellant.

B261560

(Los Angeles County
Super. Ct. No. KA078022)

APPEAL from a judgment of the Superior Court of Los Angeles County.

William C. Ryan, Judge. Reversed and remanded with directions.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Viet H. Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

The instant appeal presents an issue recently decided by the California Supreme Court resolving a split in the courts of appeal on whether an inmate sentenced to multiple third strike sentences for serious or violent felonies together with felonies that are neither serious nor violent is disqualified to petition for resentencing under Proposition 36, the Three Strikes Reform Act of 2012. In *People v. Johnson* (2015) 61 Cal.4th 674 (*Johnson*), the high court held such inmates are eligible for resentencing under a count specific approach. The trial court here followed precedent existing at the time, *People v. Anthony* (previously published at (2014) 230 Cal.App.4th 1176), which found the imposition of any of multiple third strike sentences, one of which was based on a conviction for a violent or a serious felony, categorically disqualified such inmates from resentencing under Proposition 36. Given that the Supreme Court has now resolved this issue in a manner inapposite to the cases relied upon by the trial court, we reverse the trial court's denial of Larry Watson's petition and remand the matter for resentencing using count specific analysis consistent with *Johnson*.

DISCUSSION & STATEMENT OF FACTS

On February 6, 2007, Watson robbed Cynthia Caballero of her purse.¹ He then led the police on a high speed car chase, which ended only when he crashed into the back of another car. A jury convicted Watson of second degree robbery (count 1; Pen. Code, § 211),² evading a peace officer with willful and wanton disregard for the safety of others (count 2; Veh. Code, § 2800.2, subd. (a)), and misdemeanor resisting and delaying a peace officer in discharging his or her office (count 3; § 148, subd. (a)(1)). The trial court subsequently found Watson had been convicted of three strike priors which were also prior serious felony convictions. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d); 667, subd. (a)(1).) As a result, Watson was sentenced to a third-strike sentence of 25 years to life on counts 1 and 2, plus two five-year enhancements for his prior serious

¹ A more detailed description of the underlying crime can be found at this court's opinion in *People v. Watson* (Nov. 4, 2008, B200991) [nonpub. opn.].

² All further section references are to the Penal Code unless otherwise specified.

felony convictions on count 1, plus a one year sentence on count 3 to be served in county jail; all terms were ordered to run consecutively.³

On November 6, 2012, California voters passed Proposition 36, which amends the Three Strikes law to impose an indeterminate life sentence only on those defendants who are convicted of a third strike offense that is a serious or violent felony or where the prosecution pleads and proves an enumerated exception. Otherwise, the defendant is sentenced as a second strike offender. (§§ 667, subs. (e)(2)(A), (C), 1170.12, subd. (c)(2)(C).) Proposition 36 also authorizes an inmate currently serving a third-strike sentence for a nonviolent or nonserious felony to petition for resentencing under the amended statute. (§ 1170.126, subs. (a)-(b).)

On October 30, 2014, Watson filed a petition to recall his sentence for evading a peace officer in count 2 on the ground it is not a serious or violent crime. As a result, Watson argued he was entitled to be resentenced as a second strike offender as to that count. The trial court denied Watson's petition on November 13, 2014, reasoning that Watson's conviction on count 1 for second degree robbery, a violent felony pursuant to section 667.5, subdivision (c)(9), made him ineligible for resentencing under Proposition 36. Watson timely appealed on December 1, 2014.

He joined a number of inmates seeking a recall of their sentences for nonserious and nonviolent third-strike offenses where their aggregate sentence included a conviction for a serious or violent felony. Proposition 36 failed to specify whether an inmate was disqualified from seeking a recall of his sentence if he was also convicted of a serious or violent felony. As noted in the outset of this opinion, courts of appeal were divided on whether such a defendant was entitled to resentencing. On July 2, 2015, the California

³ The trial court failed to impose the two five-year priors (§ 667 (a)(1)) on count 2, as is required. *People v. Williams* (2004) 34 Cal.4th 397, 403-405.) Because the sentence imposed is unauthorized, we may correct it at any time. (*People v. Cunningham* (2001) 25 Cal.4th 926, 1044-1045.) Accordingly, we direct the sentence and abstract of judgment modified to reflect the imposition of an additional 10 years for the two status enhancements pursuant to section 667, subdivision (a). After the amendment, the court may proceed with its exercise of discretion under section 1170.126.

Supreme Court resolved the issue by holding, “an inmate is eligible for resentencing with respect to a current offense that is neither serious nor violent despite the presence of another current offense that is serious or violent.” (*Johnson, supra*, 61 Cal.4th at p. 695.) The issue is now settled, and it is apparent that Watson should have been considered for possible resentencing. Although Watson’s conviction for attempted second degree robbery is properly considered a disqualifying conviction as a serious felony under section 1170.126, he is nonetheless eligible for recall of his indeterminate sentence for evading a peace officer with willful and wanton disregard for the safety of others pursuant to section 1170.126, subdivision (f), “unless the court, in its discretion, determines that resentencing [Watson] would pose an unreasonable risk of danger to public safety.” (*Ibid.*)

DISPOSITION

The denial of Watson’s petition for recall of sentence is reversed and the matter remanded for the trial court to exercise its discretion as authorized under section 1170.126. The abstract of judgment is ordered modified in accord with the opinion.

OHTA, J.*

We concur:

BIGELOW, P.J.

FLIER, J.

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