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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

MONTE KIM TAYLOR,

Defendant and Appellant.

C077850

(Super. Ct. Nos. CM013918,
CM011807)

Defendant Monte Kim Taylor is serving two consecutive 25-year-to-life terms under the three strikes law for vehicle manslaughter with gross negligence and child endangerment. He appeals from the trial court's denial of his petition for Penal Code¹ section 1170.126 resentencing because one of his current convictions is for a serious felony, rendering him ineligible for resentencing as to both convictions. He contends the serious felony conviction does not preclude resentencing for a felony that is not serious or

¹ Undesignated statutory references are to the Penal Code.

violent. Based on a recent opinion from our Supreme Court, we shall reverse the trial court's order and remand for further proceedings.

On October 25, 1999, a car driven by defendant crashed, killing his wife. Defendant's eight-year-old son was a passenger in the rear seat of the vehicle. Defendant appeared intoxicated at the scene. He had been drinking beer and took some Vicodin before driving the car. Defendant's car had attained a speed of between 80 and 85 miles per hour before the accident.

A jury found defendant guilty of vehicular manslaughter with gross negligence and felony child endangerment. (*People v. Taylor* (Mar. 27, 2003, C039454) [nonpub. opn.] at p. 1.) The trial court sustained three prior strike allegations and sentenced defendant to consecutive 25-year-to-life terms. (*Ibid.*) This court affirmed his conviction on appeal in an unpublished opinion. (*Ibid.*)

Defendant filed a section 1170.126 petition for resentencing. The prosecution's opposition argued that the vehicular manslaughter conviction, a serious felony (see § 1192.8, subd. (a)), rendered defendant ineligible for resentencing on that count and for the child endangerment conviction, even though that crime was not a serious or violent felony. The trial court agreed with the prosecution and denied the petition, finding defendant ineligible for resentencing on either count.

Following the passage of Proposition 36, a defendant, subject to exceptions not relevant here, is no longer subject to a three strikes sentence for a crime that is neither a serious nor a violent felony. (§§ 667, subd. (e)(2)(A), (e)(2)(C), 1170.12, subd. (c)(2)(A), (c)(2)(C); *People v. Yearwood* (2013) 213 Cal.App.4th 161, 170.) Section 1170.126 allows a person presently serving a three strikes sentence for a felony that is neither serious nor violent to petition for resentencing as a second strike offender. (§ 1170.126, subd. (a).)

This case turns on whether defendant's conviction and three strikes sentence for the vehicular manslaughter conviction, a serious felony, renders him ineligible for

