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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CURTIS BARNETTE JOSHUA,

Defendant and Appellant.

E058544

(Super.Ct.No. FWV027967)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Leslie A. Rose, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Curtis Barnette Joshua appeals from an order denying his petition for recall of his indeterminate life term, under Penal Code section 1170.126, subdivision (f).¹ We will affirm the order.

BACKGROUND²

Defendant was convicted in 2005 of one count of robbery (Pen. Code, § 211), one count of criminal threats (Pen. Code, § 422), and one count of evading a peace officer (Veh. Code, § 2800.2, subd. (a)). Two strike prior allegations were found true, as were allegations pursuant to Penal Code sections 667, subdivision (a)(1), and 667.5, subdivision (b).

In June 2005, the court sentenced defendant to 25 years to life on the first count, stayed a sentenced of 25 years to life on the second count pursuant to section 654, and imposed a concurrent term of 25 years to life on the third count. The court imposed a five-year term for the section 667, subdivision (a)(1) enhancement, and imposed and struck sentences on the three section 667.5, subdivision (b) enhancements.

On November 6, 2012, the electorate passed Proposition 36, also known as the Three Strikes Reform Act. Among other things, this ballot measure enacted section 1170.126, which permits persons currently serving an indeterminate life term under the

¹ All further statutory citations refer to the Penal Code.

² The underlying facts are not material to the issue we consider in this appeal.

three strikes law to file a petition in the sentencing court, seeking to be resentenced to a determinate term as a second-striker. (§ 1170.126, subd. (f).) If the trial court determines, in its discretion, that the defendant meets the criteria of section 1170.126, subdivision (e), the court may resentence the defendant. (§ 1170.126, subs. (f), (g).) Section 1170.126, subdivision (e)(1) provides, as pertinent here, that a defendant is eligible for resentencing if he or she is “serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12 for a conviction of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.”

On March 25, 2013, defendant filed a petition for modification of his sentence pursuant to Proposition 36.

On April 4, 2013, the court denied the petition, finding that robbery and criminal threats are both serious felonies.

Defendant filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) We offered defendant the opportunity to file any supplemental brief he deemed necessary, but he did not do so.

We have independently examined the record and have found no arguable issues. Robbery is a violent felony. (§ 667.5, subd. (c)(9).) Criminal threats in violation of section 422 is a serious felony. (§ 1192.7, subd. (c)(38).) Accordingly, defendant is not eligible for resentencing pursuant to section 1170.126, subdivision (f). We are satisfied that defendant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P.J.

We concur:

RICHLI
J.

KING
J.