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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.

TIMOTHY JOHNSON,

Defendant and Appellant.

E060369

(Super.Ct.No. FSB902776)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. Affirmed.

Michelle Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Timothy Johnson appeals after the trial court denied his petition to recall his sentence and for resentencing, pursuant to the Three Strikes Reform Act of 2012 (Proposition 36). We affirm.

## **FACTS AND PROCEDURE**

On July 3, 2009, defendant shoplifted a number of jerseys from a Wal-Mart store and brandished a knife at store personnel who followed him out into the parking lot.

On May 11, 2010, the People filed a second amended information charging defendant with second degree robbery (Pen. Code, § 211)<sup>1</sup> and assault with a deadly weapon (§ 245, subd. (a)(1)). The People alleged as to the robbery that defendant personally used a deadly weapon (§ 12022, subd. (b)(1)), and alleged as to both counts that he had three strike priors (§§ 667, subd. (b)-(i) and 1170.12, subds. (a)-(d) and three serious felony priors (§ 667, subd. (a)(1)).

On May 20, 2010, the jury found appellant guilty on both counts and found true the personal use of a deadly weapon allegation. On May 24, 2010, the jury found true each of the alleged prior convictions.

On September 14, 2010, the trial court sentenced defendant to 41 years to life as follows: 25 years to life for the robbery, plus 25 years to life for the assault to be served concurrently, plus one year consecutive for the personal use enhancement, plus five years each for the serious felony priors, to be served consecutively. On November 2, 2012, the court modified the sentence to stay the one year personal use enhancement, making defendant's sentence 40 years to life.

On December 6, 2013, after passage of Proposition 36, defendant filed a petition under section 1170.126 for recall of the sentence and for resentencing. On December 13,

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

2013, the court denied defendant's petition because his current commitment offense, robbery, made him ineligible under section 1170.126, subdivision (e), because it is a serious felony. This appeal followed.

### **DISCUSSION**

This court appointed counsel to represent defendant on appeal. Appellate counsel has now filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a brief statement of the case, identifying potentially arguable issues, and requesting this court to undertake a review of the entire record.

Defendant has been offered an opportunity to file a personal supplemental brief, and granted an extension for that purpose, but he has not done so. Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the entire record, and we find no arguable issues.

**DISPOSITION**

The trial court's ruling is affirmed.

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RAMIREZ  
P. J.

We concur:

KING  
J.

MILLER  
J.