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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.

HAROLD WILLIAM MILLER,

Defendant and Appellant.

E062186

(Super.Ct.No. CR67859)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Paul J. Katz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Harold William Miller appeals from an order denying his petition for recall of his indeterminate life term under Penal Code section 1170.126, subdivision (f).<sup>1</sup> We will affirm the order.

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

## FACTUAL AND PROCEDURAL BACKGROUND

On March 27, 1996, Riverside Police Department officers received information that defendant was in possession of a large amount of methamphetamine. Later that afternoon, officers went to a residence where they suspected defendant was residing. Upon arrival, they saw an individual, later identified as defendant, on the front porch. When the officers approached, defendant fled into the house and out the back door. The officers encountered two women at the front door. One of the women gave the officers permission to search the residence and also stated that defendant had a gun.

Officers eventually located defendant hiding in a backyard shed and arrested him. Defendant had initially denied having a gun. When the officers informed defendant that there were children around the house and if a child found the gun it could harm the child, defendant showed the officers where he had tossed the gun. An officer retrieved the gun and upon inspection, discovered that it was loaded.

On March 17, 1999, a jury convicted defendant of being a felon in possession of a firearm (former § 12021, subd. (a)(1)). In a bifurcated proceeding, the trial court found true that defendant had suffered two prior strike convictions (former §§ 667, subds. (c) & (e), 1170.12, subd. (c)) and two prior prison terms (former § 667.5, subd. (b)). On June 18, 1999, defendant was sentenced to a total indeterminate term of 25 years to life in state prison with credit for time served.

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

Section 1170.126, subdivision (e), 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.” (§ 1170.126, subd. (e)(1).) The Reform Act makes ineligible for resentencing those persons who “[d]uring the commission of the current offense, the defendant used a firearm, [or] was armed with a firearm . . . .” (§§ 667, subd. (e)(2)(C)(iii); 1170.12, subd. (c)(2)(B)(iii); see § 1170.126, subd. (e).)

On January 16, 2014, defendant filed a petition for resentencing under section 1170.126. The People subsequently filed an opposition, arguing defendant was statutorily ineligible under the Reform Act because he was armed with a firearm during the commission of the crime.

The trial court heard the petition on October 20, 2014. Following argument from the parties, the trial court denied the petition, finding defendant ineligible for resentencing under section 1170.126 because defendant had been armed during the commission of his commitment offense of being a felon in possession of a firearm. On October 21, 2014, defendant filed a notice of appeal.

## II

### DISCUSSION

We appointed counsel to represent defendant on appeal. After examination of the record, counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. The Reform Act added section 1170.126, which applies exclusively to those “persons presently serving an indeterminate term of imprisonment pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, whose sentence under this act would not have been an indeterminate life sentence.” (§ 1170.126, subd. (a).) Section 1170.126 sets forth a procedure through which certain prisoners can petition the court for resentencing. Such a person may file a petition to recall his or her sentence and be sentenced as a second strike offender. (§ 1170.126, subd. (b).) An inmate is eligible for such resentencing if none of his or her

commitment offenses constitute serious or violent felonies and none of the enumerated factors disqualifying a defendant for resentencing under the Reform Act apply. (§ 1170.126, subd. (e).) Here, as the trial court found, defendant was ineligible for resentencing under section 1170.126 because defendant's record of conviction clearly shows that defendant was armed with a firearm during the commission of his commitment offense. (See *People v. Brimmer* (2014) 230 Cal.App.4th 782 [Fourth Dist., Div. Two], and the cases cited therein.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III

DISPOSITION

The order denying defendant's petition to recall his sentence is affirmed.

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RAMIREZ  
P. J.

We concur:

McKINSTER  
J.

KING  
J.