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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.

ROBERT ARTHUR MARTINEZ,

Defendant and Appellant.

E065267

(Super.Ct.No. RIF106408)

OPINION

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

Affirmed.

Jill Kent, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Robert Arthur Martinez 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.

¹ All future statutory references are to the Penal Code unless otherwise stated.

I

BACKGROUND

On October 30, 2003, a jury found defendant guilty of being a felon in possession of a firearm (former § 12021, subd. (a)(1)) and unlawful possession of ammunition (§ 12316, subd. (b)(1)). Defendant thereafter admitted that he had suffered three prior strike convictions (former §§ 667, subds. (c) & (e)(2), 1170.12, subd. (c)(2)), to wit, an attempted murder and two robberies, and four prior prison terms (§ 667.5, subd. (b)). As a result, defendant was sentenced to a total term of 54 years to life in state prison.

On November 6, 2012, the electorate passed Proposition 36, also known as the Three Strikes Reform Act of 2012 (Proposition 36). 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).)

On November 4, 2014, voters enacted Proposition 47. Proposition 47 classifies as misdemeanors certain drug- and theft-related offenses that previously were felonies or “wobblers,” unless they were committed by certain ineligible defendants. (§ 1170.18, subd. (a).)

On June 22, 2015, the Riverside County District Attorney's office received a petition to recall defendant's sentence and for resentencing pursuant to section 1170.18.

On November 20, 2015, defendant, in pro. per., filed a petition to recall his sentence and to be resentenced under section 1170.126.

Following a hearing on December 14, 2015, the trial court denied defendant's section 1170.126 petition, finding defendant ineligible for resentencing under section 1170.126 due to his prior conviction for attempted murder.

On December 24, 2015, the trial court denied the section 1170.18 petition, finding defendant's offenses were not qualifying felonies.

Defendant filed timely notices of appeal from the denial of his section 1170.126 petition.

II

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. 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 to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so.

As previously stated, on November 6, 2012, the voters approved Proposition 36, which amended sections 667 and 1170.12 and added section 1170.126. Proposition 36 changes the requirements to sentence a third strike offender to 25 years to life in prison. (*People v. Yearwood* (2013) 213 Cal.App.4th 161, 167 (*Yearwood*)). Under the Three Strikes law as it existed prior to Proposition 36 (former §§ 667, 1170.12), a defendant who had previously been convicted of two or more serious or violent felonies was subject to an indeterminate sentence of 25 years to life upon his or her conviction of any new felony. Proposition 36 changed the Three Strikes law by reserving indeterminate life sentences for cases where the new offense is also a serious or violent felony, unless the prosecution pleads and proves an enumerated disqualifying factor. In all other cases, a recidivist defendant will be sentenced as a second strike offender, rather than a third strike offender. (*Yearwood*, at pp. 167-168, citing §§ 667, 1170.12.)

Proposition 36 also created a “ ‘post-conviction release proceeding’ ” whereby a three strikes prisoner who is serving an “indeterminate life sentence” for a crime that was not a serious or violent felony—and who is not otherwise disqualified—may have his or her sentence recalled and be resentenced as a second strike offender, unless the court “determines that resentencing . . . would pose an unreasonable risk of danger to public safety.” (§ 1170.126, subds. (a), (f), (m).)

Under Proposition 36, an inmate is not eligible for resentencing if the inmate has a prior conviction for “any of the offenses appearing in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clause (iv) of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.” (§ 1170.126, subd. (e)(3).) Among the offenses covered under those clauses are “[a]ny homicide offense, including any attempted homicide.” (§§ 667, subd. (e)(2)(C)(iv)(IV), 1170.12, subd. (c)(2)(C)(iv)(IV).) When determining an inmate’s eligibility under Proposition 36, “the court may examine relevant, reliable, admissible portions of the record of conviction to determine the existence or nonexistence of disqualifying factors.” (*People v. Blakely* (2014) 225 Cal.App.4th 1042, 1063.)

Here, the record contains abstracts of judgment in defendant’s prior cases. These abstracts of judgment established defendant had a prior conviction for attempted murder. Therefore, we find the trial court’s denial of defendant’s petition for resentencing was supported by relevant, reliable, and admissible evidence from his record of conviction.²

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.

² We also note that defendant is ineligible for resentencing pursuant to section 1170.126, subdivision (e)(3), due to his current conviction for felon in possession of a firearm. (*People v. Brimmer* (2014) 230 Cal.App.4th 782, 799.)

III

DISPOSITION

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

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

McKINSTER

J.