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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LENEL RANDOLPH,

Defendant and Appellant.

F069076

(Super. Ct. No. BF104040A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Benjamin Ramos, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P. J., Poochigian, J. and Smith, J.

INTRODUCTION

The Three Strikes Reform Act of 2012 (Proposition 36) permits third strike offenders serving indeterminate life sentences for crimes that are not serious or violent felonies to petition for resentencing. (Pen. Code¹, § 1170.126 et seq.) If a petitioning offender satisfies the statute’s eligibility criteria, he is resentenced as a second strike offender “unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (§ 1170.126, subd. (f).)

Following the enactment of Proposition 36, defendant filed a petition for resentencing. The trial court, however, determined defendant was statutorily ineligible for resentencing and denied the petition. On appeal, defendant contends (1) the trial court’s denial was not supported by relevant, reliable, and admissible evidence from his record of conviction, and (2) the People failed to plead and prove a disqualifying prior conviction. We reject these arguments, and affirm the judgment.

FACTS

On December, 15, 2003, defendant Lenel Randolph pleaded guilty to possession of a controlled substance. As defendant had prior convictions for attempted murder and residential robbery, the trial court sentenced defendant as a third strike offender to a term of 25 years to life in prison.

On February 20, 2014, defendant filed a petition for recall of sentence under Proposition 36. Defendant attached abstracts of judgment reflecting his current conviction for possession of a controlled substance, as well as his prior convictions for robbery and attempted murder.

The trial court denied defendant’s petition by minute order on February 20, 2014. This appeal followed.

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

DISCUSSION

I. Defendant's disqualifying convictions were adequately established.

Defendant asserts the trial court erred by denying his petition for resentencing, as the trial court's denial was not supported by relevant, reliable, and admissible evidence from his record of conviction. We disagree.

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 “any 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, defendant attached abstracts of judgment to his petition for resentencing that established he had a prior conviction for attempted murder. On appeal, defendant does not dispute the authenticity of those abstracts, nor does defendant deny that he committed the offenses reflected in those abstracts. 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.

II. The People did not need to plead and prove defendant's disqualifying conviction.

Defendant argues the trial court's denial of his petition for resentencing was erroneous because the People failed to plead and prove his prior disqualifying conviction for attempted murder. We have explicitly held, however, that for resentencing purposes, “a disqualifying factor ... need not be pled and proved in the sense of being specifically alleged in an accusatory pleading and expressly either found by the trier of fact ... or

admitted by the defendant.” (*People v. Blakely, supra*, 225 Cal.App.4th at p. 1058.)

Accordingly, we reject defendant’s argument.

DISPOSITION

The judgment is affirmed.