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

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
JUAN MUÑOZ,  
  
Defendant and Appellant.

F070556  
  
(Super. Ct. No. SC079623A)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Kern County. Michael G. Bush,  
Judge.

John P. Dwyer, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and  
Respondent.

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\* Before Kane, Acting P.J., Franson, J. and Peña, J.

Appellant Juan Muñoz appeals from the court's denial of his petition for resentencing pursuant to Proposition 36, the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126, subd. (e)).<sup>1</sup> Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

In 1986 Muñoz was convicted of two counts of robbery and sentenced to a 13-year prison term.

In 1996 he was convicted of five counts of misdemeanor indecent exposure (§ 314, subd. 1.) that occurred while he was in prison custody. On November 19, 1996, he was sentenced to 900 days in local custody, which was to begin after he served his prison term for the robberies. On August 19, 1999, Muñoz began his local custody sentence at the Lerdo Pre-Trial Facility in Kern County.

On January 18, 2000, during a search of Muñoz's cell, detention officers discovered that a piece of metal had been removed from a vent in the cell and replaced with a hardened piece of toilet paper mixed with soap. Muñoz was taken to the exercise yard to be searched. When an officer asked him for his right shoe, Muñoz turned his back to the officer before handing him the shoe. The officer then saw in Muñoz's hand a shank that consisted of a piece of metal, nine inches long and three quarters of an inch wide, that had a white piece of cloth wrapped on one end. Muñoz rushed toward a toilet, threw the shank into it, and flushed. Although the officer was able to grab one end of the metal and pulled it out, Muñoz grabbed the shank and after a short struggle was able to flush it down the toilet.

On October 12, 2000, a jury convicted Muñoz of possession of a weapon by an inmate (§ 4502, subd. (a)) and found true allegations that Muñoz had two prior convictions within the meaning of the Three Strikes law.

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

On November 9, 2000, the court sentenced Muñoz to 25 years to life, consecutive to the term he was serving when he committed the possession of a weapon by an inmate offense.

On November 6, 2012, California voters passed the Three Strikes Reform Act of 2012 (the Act) which became effective the next day. In pertinent part the Act establishes a procedure for an offender serving an indeterminate life sentence for a third strike conviction that is not deemed a serious and/or violent felony to file a petition for recall of sentence and to be resentenced as a second strike offender. (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 596-597, § 1170.126, subd. (f).)

On March 3, 2014, Muñoz filed a petition for resentencing pursuant to section 1170.126 arguing that he was eligible for resentencing under the Act.

On April 1, 2014, the People filed a response to the petition arguing that Muñoz was not eligible for resentencing under the Act because he was armed with a deadly weapon when he committed his possession of a weapon by an inmate offense.

On October 31, 2014, the court denied Muñoz's *Marsden*<sup>2</sup> motion.

On November 12, 2014, the People filed exhibits in support of the opposition to Muñoz's motion to recall his sentence.

On November 20, 2014, defense counsel filed a reply to the People's opposition to recall Muñoz's sentence.

On November 24, 2014, the court again heard and denied another *Marsden* motion by Muñoz. Afterwards, the court heard and denied Muñoz's motion for recall of sentence.

Muñoz's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) However, in a document filed on

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<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

April 24, 2015, Muñoz contends the evidence was insufficient to sustain his conviction for possession of a weapon by an inmate. This contention is not cognizable because it should have been raised in an appeal filed 60 days from the date he was sentenced in that matter. (Cal. Rules of Court, rule 8.308 [notice of appeal must be filed within 60 days after the rendition of the judgment]; *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421 [the failure to file a timely appeal forfeits a claim because it deprives the appellate court of jurisdiction].) Further, following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

**DISPOSITION**

The judgment is affirmed.