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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

HUNG LINH HOANG,

Defendant and Appellant.

G051861

(Super. Ct. No. 03WF1095)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Kazuharu Makino, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Hung Linh Hoang, in pro. per.; and James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

BACKGROUND

In 2004, defendant Hung Linh Hoang was convicted of willful, deliberate, and premeditated attempted murder (Pen. Code, §§ 664, 187, subd. (a)), and street terrorism (*id.*, § 186.22, subd. (a)). The jury found it to be true that, in committing the attempted murder, defendant had intentionally and personally used a firearm (*id.*, § 12022.53, subd. (a)), personally used a firearm (*id.*, § 12022.5, subd. (a)), and had acted for the benefit of, at the direction of, or in association with a criminal street gang (*id.*, § 186.22, subd. (b)(1)). The trial court sentenced defendant to life with the possibility of parole, plus 10 years; defendant had to serve a minimum of 15 years before he could be considered for parole. Defendant appealed; this court affirmed the judgment. (*People v. Hoang* (Apr. 28, 2006, G034779) [nonpub. opn.])

In January 2015, defendant filed a petition requesting redesignation of his felony conviction for street terrorism as a misdemeanor, and resentencing, pursuant to Penal Code section 1170.18. The trial court denied the petition on the ground that violation of Penal Code section 186.22, subdivision (a) was not an offense for which redesignation and resentencing to a misdemeanor was permitted. Defendant filed a timely notice of appeal from the postjudgment order.

We appointed counsel to represent defendant on appeal. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*), setting forth the facts of the case, raising no issues, and requesting that we independently review the entire record. We provided defendant 30 days to file written argument on his own behalf; he did so.

We have examined the entire record, appointed appellate counsel's *Wende/Anders* brief, and defendant's supplemental brief; we find no reasonably arguable issue. (*Wende, supra*, 25 Cal.3d 436.) We therefore affirm.

ANALYSIS OF POTENTIAL ISSUES

Defendant contends that the trial court erred by denying his petition to redesignate his felony conviction for street terrorism as a misdemeanor. Penal Code section 186.22, subdivision (a) is not one of the offenses specified in Penal Code section 1170.18, subdivision (a) for designation as a misdemeanor. Street terrorism may be charged as a felony or misdemeanor; in this case, defendant was charged with, and convicted of, a felony.

Defendant also contends that the prosecution had the burden of proving defendant was not eligible for redesignation and resentencing. *People v. Sherow* (2015) 239 Cal.App.4th 875, 879-880, holds, to the contrary, that defendant bears the burden of proof of his eligibility for resentencing under Penal Code section 1170.18.

Defendant also contends he was entitled to an evidentiary hearing on the petition, he was denied his right to appointed counsel, he was denied the right to appear at the hearing on his petition, and the petition was not heard by the judge who originally sentenced him. These alleged errors are, at best, harmless in light of defendant's lack of a statutory right to relief on his petition.

To the extent defendant argues issues relating to the underlying trial—insufficiency of the evidence, instructional error, actual innocence, prosecutorial misconduct, ineffective assistance of counsel, judicial misconduct, and denial of due process—these issues have either been resolved by *People v. Hoang, supra*, G034779, or been forfeited for failure to raise them in that appeal.

Our review of the record pursuant to *Wende, supra*, 25 Cal.3d 436, and *Anders, supra*, 386 U.S. 738, including the possible issues suggested by defendant, has disclosed no reasonably arguable appellate issue. Competent counsel has represented defendant in this appeal.

DISPOSITION

The postjudgment order is affirmed.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.