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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMMIE LEE FORD,

Defendant and Appellant.

A138848

(Sonoma County  
Super. Ct. No. SCR32085)

Sammie Lee Ford is currently serving two indeterminate 25 year to life sentences as a three-strike offender. He appeals from an order denying his petition to be resentenced as a two-strike offender under Proposition 36, the “Three Strikes Reform Act of 2012” that amended Penal Code sections 667 and 1170.12, and added Penal Code section 1170.126 (Prop 36). (See *People v. Yearwood* (2012) 213 Cal.App.4th 161, 167.)<sup>1</sup> Ford is eligible for resentencing under Prop 36, but the court denied his request because it found that he represents a “danger to public safety” within the meaning of Prop 36. (§ 1170.126, subd. (f) [eligible petitioner “shall be resentenced . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety”].)

Ford contests this ruling on multiple grounds, arguing among other things that the court applied the wrong burden of proof and standards in making its determination, including failure to apply the definition of “unreasonable risk of danger to public safety”

<sup>1</sup> Unless otherwise indicated, further statutory references are to the Penal Code.

contained in Proposition 47 that was approved by the voters in November 2014. (§ 1170.18, subd. (c).) These arguments lack merit.

A unique development in Ford's case is that the trial court file pertaining to his burglary convictions was destroyed, and when it was reconstructed it did not include his unsuccessful motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) in connection with his sentencing as a third-striker. He asked the court to consider the arguments made in his *Romero* motion in passing on his petition for resentencing under Prop 36. At the hearing on resentencing, the court said that it reviewed the case file in ruling on Ford's petition, but the file did not contain the *Romero* motion, so the court did not have all potentially relevant information when it made its determination.

We conclude that this error was harmless, and that the court did not abuse its discretion when it denied Ford's resentencing petition. Accordingly, we affirm.

## **I. BACKGROUND**

### **A. Ford's Criminal Record**

In 1987, at age 13, Ford was arrested for driving a stolen vehicle, and was placed in a juvenile detention camp. In 1989, he was released from camp and returned to his mother's custody.

In 1990, he was arrested in a stolen vehicle. The victim reported that Ford put a gun to his head and said, "Don't move, give me the keys and get out of the car." He was found to have committed armed robbery, and was committed to the Youth Authority for a maximum of five years.

In 1992, after being paroled from the Youth Authority, he committed a robbery and was sentenced to state prison.

In 1993, he was convicted of voluntary manslaughter for participating in a gang-related shooting along with Taumu James and Michael Bourgeois.

In 1995, he violated parole on the 1992 robbery.

In 1997, he again violated parole on that offense.

In 1998, seven months after being discharged from parole for the 1992 robbery, he was convicted of driving under the influence.

In 2002, he was convicted of burglarizing a jewelry store in West Covina on March 4, 2001. He, James, and Bourgeois made off with jewelry valued between \$400,000 and \$500,000. They were apprehended, the jewelry was recovered, and they were released from custody.

On March 12, 2001, eight days after the West Covina heist, Ford committed the crimes for which he was sentenced in this case. He, James, Bourgeois, and another accomplice burglarized two jewelry stores in Petaluma, stealing about \$15,000 in jewelry.

We affirmed the judgment for the Petaluma burglaries, which sentenced him to two concurrent terms of 25 years to life, plus two years and four months for the West Covina offense. (*People v. Ford* (June 24, 2004, A101999) [nonpub. opn.]<sup>2</sup>)

#### B. Ford's Prison Record

In 2003, Ford engaged in mutual combat with another inmate, disobeyed an order, and committed a library infraction.

In 2004, he delayed lockup.

In 2005, he disobeyed an order.

In 2006, he disobeyed an order.

In 2008, he tested positive for marijuana.

In 2009, marijuana and a cell phone were found in his cell. The wires on the TV in the cell had been altered to charge the phone.

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<sup>2</sup> We grant: (1) the People's request for judicial notice of our prior opinion in the case; (2) Ford's request to augment the record to include: People's Exhibit 1 at the resentencing hearing, Ford's rap sheet; People's Exhibit 2 at the hearing, Department of Corrections and Rehabilitation records of Ford's incarceration; the reporter's transcript of Ford's 2003 sentencing hearing; Ford's 2003 *Romero* motion and exhibits; a 2013 Sonoma County Superior Court employee's declaration regarding the destruction and reconstitution of the case file; and the docket in the case; and (3) Ford's request for judicial notice of the text of Proposition 47 and its accompanying ballot materials.

In 2012, he had another cell phone, hidden in a jar of peanut butter.

The prison records show that Ford completed educational programs that included instruction in electrical work, fiber optic cables, welding, and office machine repair.

#### C. Probation Department's Recommendation

The probation department filed a report recommending that the court deny Ford's resentencing petition. The department believed that Ford had been "righteously sentenced" as a three-strike offender, and that while his prison record was only "moderately worrisome," the department was "especially troubled that it appears Mr. Ford may have utilized his extensive training in electronics while in custody to his advantage, having been found twice with a cell phone in his cell, including an occasion where the phone was being charged via wire tampering with the television. However . . . it is the defendant's prior record and commitment offenses that are truly telling as to the danger the defendant poses."

The department continued: "The defendant's prior record clearly demonstrates a high level of violent behavior. His commitment offenses, while admittedly limited to commercial burglaries, are still extremely troubling, given the sophistication and planning as well as the targeted businesses—these were not petty thefts or low level felonious behavior, but highly coordinated criminal acts intended to yield high dollar amounts. [¶] While we are cognizant of the intentions of Proposition 36, we believe Mr. Ford represents the small percentage of inmates eligible for resentencing whose petition should be denied . . . ."

#### D. The Hearing on the Petition

Ford addressed the court at the hearing on the resentencing petition, and the matter was submitted on the parties' briefs, the probation department report, the case file, the People's exhibits, and arguments at the hearing. Defense counsel noted that the police reports and plea transcript in the manslaughter case, which were attached to Ford's *Romero* motion, showed that Ford was not the shooter, and that he was released from custody on the case after entry of his plea. The prosecutor observed that the police reports showed Ford was in the car from which the shots were fired, "bullets were fired

throughout a neighborhood over several houses,” more than one gun was used, and Ford told the other participants they should get rid of the guns.

The court recalled the trial and convictions in this case, and acknowledged that Ford did not use a gun in the manslaughter. After recounting Ford’s criminal record and prison citations, the court found that Ford “is simply not willing to accept that there are rules of society that have to be followed.” The court determined the People had proven by a preponderance of the evidence that Ford would pose an unreasonable risk of danger to public safety if he were resentenced, and denied the petition.

## II. DISCUSSION

### A. Appealability and Lack of Notice to the Victims

When this appeal was filed, there was some question as to whether the order denying the petition was appealable. Our Supreme Court has since effectively confirmed that it was. (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 597 [“the trial court’s denial of the petition for recall is an appealable order”].)

The People argue that this appeal should be dismissed because there is no record that Ford’s victims were given notice of the hearing on the petition. (Cal. Const., art. I, § 28, subd. (b)(7); § 1170.126, subd. (m); *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1300 [victim has the rights to notice and to be heard at a dangerousness hearing] (*Kaulick*)). However, as Ford points out, no law requires *the defendant* to provide the notice, the lack of notice did not deprive the court of jurisdiction to proceed on the petition (see *People v. Superior Court (Thompson)* (1984) 154 Cal.App.3d 319, 321–322), and the victims were not prejudiced because the petition was denied.

There are no grounds for dismissal of the appeal.

### B. Burden of Proof

Ford contends that the People were required to prove he is dangerous by proof beyond a reasonable doubt, rather than by a preponderance of the evidence, because the court’s determination “increased the maximum available sentence.” (See *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 542 U.S. 296, 303.)

Ford reasons the dangerousness finding increased his maximum available sentence because the mandatory nature of eligibility under Prop 36 resentencing made him a two-strike, rather than a three-strike, offender.

This argument was persuasively rejected in *Kaulick*. There, the court concluded that “[t]he maximum sentence to which Kaulick, and those similarly situated to him, is subject was, and shall always be, the indeterminate life term to which he was originally sentenced” (*Kaulick, supra*, 215 Cal.App.4th at p. 1303), and that “dangerousness is not a factor which enhances the sentence imposed when a defendant is resentenced under [Prop 36]; instead, dangerousness is a hurdle which must be crossed in order for a defendant to be resentenced at all” (*ibid.*). Moreover, *Dillon v. United States* (2010) 560 U.S. 817, 828, established that “a defendant’s Sixth Amendment right to have essential facts found by a jury beyond a reasonable doubt do not apply to limits on downward sentence modifications due to intervening laws,” such as exercises of lenity like Prop 36. (*Kaulick, supra*, at p. 1304.) We agree with this analysis. (See also *People v. Flores* (2014) 227 Cal.App.4th 1070, 1075–1076 [concurring with *Kaulick*]; *People v. Losa* (2014) 232 Cal.App.4th 789, 792–793 [right to equal protection does not require proof beyond a reasonable doubt].)

### C. Alleged Application of Incorrect Standards

Ford contends that the order denying his resentencing petition must be reversed because the court applied the wrong standards to deny it.

#### (1) *Risk of Recidivism Versus Risk of Future Violence*

Ford contends that the court’s finding that he is unable to “play by the rules” erroneously focused on his potential for recidivism in general, rather than his potential for violence. Ford notes that he has not been violent since his fight in prison in 2003, and contends that he could not be found to “pose an unreasonable risk of danger to public safety” under section 1170.126, subdivision (f) if potential for violence is the only valid consideration.

We are not persuaded by Ford’s narrow interpretation of Prop 36. If the risk of violence was Prop 36’s only concern, then presumably it would not have made persons

serving time for certain drug offenses ineligible for resentencing. (§ 1170.126, subd. (e)(2); § 1170.12, subd. (c)(2)(C); Health & Saf. Code, § 11370.4.) Prop 36 does not refer to “violence,” it refers to “safety,” which connotes freedom from a wider range of harms. Crimes that by their nature are not necessarily violent nonetheless threaten public safety. (See, e.g., *People v. Hughes* (2002) 27 Cal.4th 287, 355 [burglary laws reflect a concern for personal safety].) We therefore conclude that “public safety” within the meaning of the statute is not confined to freedom from violence, and that the court properly considered Ford’s overall potential for recidivism when it denied his petition.

(2) *Scope of the Court’s Discretion*

Ford argues that the court had only very limited discretion to determine that he would be an unreasonable danger to public safety if he were resentenced. This argument is based on two theories. First, under precedents interpreting section 190.5, subdivision (b), the juvenile life-without-parole statute (LWOP), the “shall/unless” language of section 1170.126, subdivision (f) that “the petitioner shall be resentenced . . . unless the court . . . determines [otherwise]” creates a presumption in favor of resentencing that circumscribes the court’s discretion to disallow it. Second, under precedents reviewing *Romero* motions, denial of resentencing petitions under section 1170.126 is only allowed in “ ‘extraordinary’ cases.” Neither theory holds up.

Section 190.5, subdivision (b) provides that the punishment for a 16- or 17-year old convicted of special-circumstances murder “shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life.” *People v. Guinn* (1994) 28 Cal.App.4th 1130, 1142, reasoned that LWOP under this language was “generally mandatory” and “the presumptive punishment,” and the statute “concomitantly circumscribed [the court’s discretion] to that extent.” This reasoning was disapproved in *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1371, shortly after completion of the first round of briefing in Ford’s appeal. The *Gutierrez* court concluded the statute did not establish a presumption in favor of an LWOP sentence, but rather allowed “select[ion] [of] one of the two penalties . . . with no presumption in favor of one

or the other.” (*Ibid.*) We read 1170.126 the same way, and conclude that it establishes no presumption that resentencing will be granted.

The *Romero* authorities on which Ford relies are also inapposite. The Three Strikes Law “was intended to restrict court’s discretion in sentencing repeat offenders.” (*Romero, supra*, 13 Cal.4th at p. 528.) The law “not only establishe[d] a sentencing norm . . . the law create[d] a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.” (*People v. Carmony* (2004) 33 Cal.4th 367, 378.) Accordingly, “stringent standards” were set for striking or vacating strikes. (*Id.* at p. 377.) The discretion to do so could be exercised only in “extraordinary” circumstances (*id.* at p. 378), when the defendant could be “deemed outside the scheme’s spirit” (*id.* at p. 377).

We discern no similar intent to limit the court’s discretion to deny resentencing under Prop 36. Section 1170.126, subdivision (g) provides that in determining whether a petitioner poses an unreasonable danger under subdivision (f), “the court may consider: [¶] (1) The petitioner’s criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; [¶] (2) The petitioner’s disciplinary record and record of rehabilitation while incarcerated; and [¶] (3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.” Identifying the relevant considerations so broadly evidences an intent to grant courts very wide discretion in deciding whether resentencing an offender would unreasonably endanger public safety.

Ford’s arguments for more limited discretion are mistaken.

### (3) *Whether Proposition 47 Applies*

Prop 36 was approved on November 6, 2012 (*Kaulick, supra*, 215 Cal.App.4th at p. 1285), and became effective on November 7, 2012 (Cal. Const., art. II, § 10, subd. (a)). It provides that petitions for resentencing may be filed “within two years after the effective date of the act . . . or at a later date upon a showing of good cause . . . .” (§ 1170.126, subd. (b).) On November 4, 2014, the voters approved Proposition 47 (Prop

47), and it became effective on November 5, 2014, two days before expiration of the two-year period to file for resentencing under Prop 36.

The people enacted Prop 47, in part, “to ensure that prison spending is focused on violent and serious offenses.” (Prop 47, § 2.) “[P]eople convicted of murder, rape, and child molestation will not benefit from this act.” (Prop 47, § 3, subd. (1).) Prop 47 “[r]equire[s] misdemeanors instead of felonies for nonserious, nonviolent crimes like petty theft and drug possession, unless the defendant has prior convictions for specified violent or serious crimes.” (Prop 47, § 3, subd. (3).)

Under Prop 47 prisoners serving felony sentences could apply to have their convictions reduced to misdemeanors, “unless,” as also provided in Prop 36, “the court in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (§ 1170.18, subd. (b).) Prop 47 then repeats Prop 36’s language setting forth the broad range of considerations the court can take into account in making this determination. (§ 1170.18, subs. (b)(1) – (b)(3).) However, it then adds the following qualification: “*As used throughout this Code, ‘unreasonable risk of danger to public safety’ means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.*” (§ 1170.18, subd. (c) (italics added).) Those felonies are: specified sex offenses, any homicide offense, solicitation to commit murder, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, and any serious or violent felony punishable by life imprisonment or death. (§ 667, subd. (e)(2)(C)(iv).)

In supplemental briefing, Ford contends that Prop 47’s definition of “unreasonable risk of danger to public safety” (§ 1170.18, subd. (c)) applies to those terms as used in Prop 36 (§ 1170.126, subs. (f), (g)).<sup>3</sup> He contends that the order denying his petition must be reversed and the petition granted because there is no substantial evidence from

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<sup>3</sup> Our Supreme Court has granted review in cases presenting this issue. (E.g. *People v. Payne* (2014) 232 Cal.App.4th 579, rev. granted Mar. 25, 2015.)

which to find that he is a threat to commit any of the specific offenses listed in section 667, subdivision (e)(2)(C)(iv). He argues that, at the least, a new hearing on the petition is required in order to consider his threat to public safety under the Prop 47 standard.

“In interpreting a voter initiative . . . we apply the same principles that govern statutory construction.” (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) “ ‘The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law.’ ” (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.) Although the text of a statute may be the best indicator of legislative intent, “we may reject a literal construction that is contrary to the legislative intent apparent in the statute or that would lead to absurd results.” (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 27.) Ultimately “intent prevails over the letter of the law and the letter will be read in accordance with the spirit of the enactment.” (*In re Michele D.* (2002) 29 Cal.4th 600, 606.)

As we have said, Prop 36 gives courts very wide discretion to consider public safety in deciding whether sentences for three strike offenders can be reduced. That discretion afforded courts in Prop 36 would be eviscerated if the words “[a]s used throughout this Code” in section 1170.18 were applied to alter the definition of “unreasonable risk of danger to public safety” in section 1170.126. Prop 36’s broad inquiry would be reduced to an examination of the potential for commission of only a handful of specified extremely serious crimes. Nothing in the Legislative Analyst’s description or the ballot arguments concerning Prop 47 indicate it would have that drastic effect on resentencing under Prop 36. Nor would the substance of Prop 47, which appeared to deal only with low-level offenders guilty of relatively minor drug and property crimes, have suggested to the voters that it was intended to have *any* effect on the treatment of three-strike felons under Prop 36. It would be anomalous to conclude that Prop 47 was intended to affect resentencing under Prop 36 when it was approved only three days before Prop 36’s deadline to petition for resentencing.

Moreover, applying Prop 47’s definition of an “unreasonable risk of danger to public safety” to resentencing under Prop 36 would lead to absurd results. Unlike the

prisoners affected by Prop 47, the prisoners eligible for resentencing under Prop 36 are third strikers serving sentences for felonies that cannot be reduced to misdemeanors. While there may be a certain logic to limit the range of offenses that may create a risk of danger to public safety for those whose most recent convictions are for crimes now classified as misdemeanors, that logic disappears when the Prop 47 standard is applied to third strike felons. For example, if a felon’s potential threat to public safety is considered in light of the limiting language in section 1170.18, subdivision (c) as amended by Prop 47, a propensity to commit spousal rape (§ 262) could disqualify an inmate from resentencing under Prop 36 but a propensity to commit statutory rape could not (§ 261.5). (See § 1170.18, subd. (c) [including § 262 but omitting § 261.5].) Neither could a propensity to commit such serious crimes as inducing sexual acts by fear, human trafficking, providing a child under the age of sixteen for sexual acts, abduction for prostitution, arson, or shooting at an inhabited dwelling. (§ 1170.18, subd. (c) [omitting §§ 246, 266c, 266f, 266j, 267, 450].) Prop 36 contains no specification of the range of potential crimes that may bar resentencing, and it makes no sense to apply Prop 47’s limited list of offenses when considering whether resentencing could pose a threat to public safety under Prop 36.

For these reasons, we conclude that, despite its wording, section 1170.18 was not intended to and did not qualify determinations made under section 1170.126, and that Prop 47 is of no benefit to Ford.

#### D. Failure to Consider Ford’s Romero Motion

Ford has lodged a declaration from the superior court clerk, stating that his case file was destroyed in March 2012. The file was “reconstructed in part” with copies of documents from the District Attorney’s office, but did “not contain all the filed documents that were in the original court file.” As we have indicated, in support of Ford’s petition for resentencing under Prop 36, his counsel asked the court to consider his unsuccessful *Romero* motion that was before the court when he was originally sentenced in the case. In passing on the resentencing petition, the court said it reviewed the case file, but the reconstituted file apparently did not include the 2003 *Romero* motion. We

will assume that this omission deprived Ford of his right to due process, but conclude that the error was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

Ford maintains that the following facts, cited in the *Romero* motion, were material to his resentencing petition:

“When Mr. Ford was apprehended in a rental car following the Los Angeles County burglary, no jewelry or burglary tools were located in the vehicle. . . . Rather, jewelry was located in the vehicle driven by another co-defendant. . . . Ford was arrested without incident shortly after the burglary.”

“When Mr. Ford was apprehended by police following the Sonoma County commercial burglary, again no jewelry or burglary tools were located in his vehicle. . . . The police did find jewelry in the second rental car driven by Michael Bourgeois. . . . Unlike his co-defendant, Mr. Ford was not speeding. . . .

“During the 1992 robbery, Mr. Ford and a co-defendant took a vehicle from the immediate possession of its owner. Mr. Ford did not use a weapon to accomplish the taking, and the victim was not injured. . . . Mr. Ford’s co-defendant drove the vehicle following the theft.”

“With regard to the 1992 voluntary manslaughter incident, it was Taumu James’ idea to perpetrate the crime, not Mr. Ford’s. . . . Mr. Ford did not discharge a firearm or use any other weapon during the incident.

“There is minimal evidence linking Mr. Ford to the 1992 voluntary manslaughter incident other than statements placing him in the car as a passenger. There were no witnesses.

“Mr. Ford’s negotiated plea in the voluntary manslaughter case, which he made prior to the enactment of the Three Strikes Law, was a ‘package agreement’ requiring all four defendants to accept the district attorney’s offer.”

Counsel here is grasping at straws. It is clear from our prior opinion in the case that the Petaluma burglaries were coordinated affairs in which Ford was an active participant. He had rented one of the two getaway cars and was driving it when he was

arrested. Windows had been broken at one of the stores, and Ford had glass fragments on his shoes. Surveillance photos showed a man resembling Ford at the scene. Ford overstates it when he says that no burglary tools were found in his car. Items recovered in the car included flashlights, a pillow case, and a ski cap with eye and mouth holes cut out. Whether the jewelry and tools were found in the other car was, in any event, immaterial.

The *Romero* motion acknowledged that the circumstances of the West Covina burglary were very similar to those in Petaluma, involving two rental cars and three of the same individuals. That Ford's rental car did not contain any of the jewelry or burglary tools was, again, insignificant.

The facts that the 1992 robbery involved theft of a vehicle without injury to the victim, and that Ford did not use a weapon to commit the offense or drive the vehicle away, were also inconsequential.

The police reports for the manslaughter offense attached to the *Romero* motion showed that it was a very violent crime, where 45 shell casings were recovered, and bullets hit a number of homes as well as the victim. Ford was not charged with being the shooter, but reportedly advised his cohorts to get rid of the guns that were used. The mitigated circumstances of the offense Ford cites did not outweigh his no contest plea. At the hearing on the resentencing petition, the court recognized that Ford did not use a gun in the manslaughter case.

Ford writes: “[T]he prosecution highlighted in its May 8, 2013 sentencing brief that [he] utilized a firearm in the robbery he committed as a juvenile. . . . Thus, the court was aware that [he] had used a firearm during the 1990 robbery . . . and was also aware that a firearm had been used by [his] cohort during the 1992 voluntary manslaughter. . . . Given that the presentence reports did not provide any details whatsoever regarding the 1992 robbery . . . and that the court was aware that firearms had been used during some of [his] prior offenses, it is certainly conceivable that the court presumed [he] used a firearm during the 1992 robbery. A review of the *Romero* motion and exhibits, as explicitly requested by [his] trial counsel . . . would have revealed that [he] did not use a

weapon to accomplish the 1992 robbery, and the victim was uninjured.” But nothing in the record indicated that the court jumped to any conclusion that the force or fear in the 1992 robbery involved use of a gun, and it is entirely speculative to believe the court was under any misconception concerning that crime.

There was no prospect that the outcome of the resentencing petition would have been different if the court had taken the unsuccessful *Romero* motion into account.

#### E. Scope of Review and Decision on the Merits

We agree with Ford that factual findings made in connection with resentencing petitions are subject to review for substantial evidence. Ford’s record of criminal offenses and prison infractions provided substantial evidence to support the court’s finding “that he is simply not willing to accept that there are rules of society that have to be followed.”

The broad discretion given to the court in ruling on these petitions dictates that the ultimate decision be reviewed only for abuse of that discretion. “[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*People v. Carmony, supra*, 33 Cal.4th at p. 377.) One reasonable way to view the evidence, well argued for Ford in the trial court and on appeal, is that he is a peaceable, fully-reformed former gang member who no longer presents any significant danger to society. Another reasonable way to view his record is that of an incorrigible miscreant, who has consistently violated criminal laws and prison rules. The choice between these reasonable alternatives was for the trial court to make, and cannot be reversed under abuse of discretion review.

Ford contends that the court erroneously failed to consider various relevant facts when it denied his petition. He cites the remoteness of his first two strikes, his age (39) when the petition was heard, and his expressions of remorse for his crimes. But these matters were all broached in either Ford’s resentencing brief, the probation department’s resentencing report, or Ford’s remarks to the court at the resentencing hearing, and there is no reason to believe that the court ignored any of them.

Ford argues that the court failed to consider his “excellent rehabilitative record in prison,” including in particular the drop in his classification score, which governs the level of security a prisoner requires (*In re Jenkins* (2010) 50 Cal.4th 1167, 1175), from over 70 in 2003 to 23 in 2012. The 23 score qualifies Ford for placement in a Level II facility (Cal. Code Regs., tit. 15, § 3375.1, subd. (a)(2), which he represents is the least secure placement available to a life inmate. But the court took Ford’s prison record into account when it rendered its decision, noting that “we have a citation or rule violations in 2003, 2005, 2006, 2009, 2012. So there’s a series of incidents there.” The excellence of Ford’s prison record is debatable, and the court did not abuse its discretion when it took a negative view of it.

Ford contends that the court “erred in failing to consider the fiscal consequences of the continued indeterminate incarceration of a 39-year old inmate.” However, section 1170.126 does not identify this as a relevant consideration, and even if it was, nothing in the record suggests that the court was unmindful of it.

Ford’s arguments about the court failing to consider various factors potentially favorable to him are, at bottom, an unavailing attempt to have us reweigh the evidence.

Ford contends that the court “failed to articulate a rational nexus between [his] criminal and prison records and its finding of current dangerousness.” But the rational nexus is obvious. The court could reasonably conclude that someone who committed criminal offenses in 1987, 1990, 1992, 1998, and 2001, and prison infractions in 2003, 2004, 2005, 2006, 2008, 2009, and 2012 was a danger to public safety in 2013, when the resentencing petition was heard.

### **III. DISPOSITION**

The order denying the petition for resentencing is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Jenkins, J.