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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JACK JACKSON,

Defendant and Appellant.

B288878

(Los Angeles County  
Super. Ct. No. GA031819)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed in part, reversed in part and remanded with directions.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Jennifer G. Ross Deputy Attorney General, for Plaintiff and Respondent.

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Appellant Jack Jackson filed a motion, deemed a petition for habeas corpus, seeking relief under Proposition 36, also known as the Three Strikes Reform Act, and Proposition 57, also known as the Public Safety and Rehabilitation Act of 2016. The trial court denied the petition to the extent it sought relief under Proposition 36, as it duplicated a 2012 petition that had been denied. To the extent the petition sought relief under Proposition 57, the court concluded it raised issues that were civil in nature, and transferred the matter to the civil division. We find no error in the court's ruling to the extent appellant sought to relitigate issues under Proposition 36, but conclude the court mischaracterized the issues raised under Proposition 57, and remand the matter for determination by the criminal writs center.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In 1997, appellant Jack Jackson was convicted after a jury trial of two counts of possessing a firearm as a felon. (Former Pen. Code, § 12021, subd (a), now Pen. Code, § 29800.)<sup>1</sup> Because appellant had prior convictions that qualified as “strikes” under the Three Strikes Law (§§ 667, 1170.12), he was sentenced as a “third strike” offender to an indeterminate term of 25 years to life on each count (running concurrently). In December 2012, following the November 2012 enactment of Proposition 36, the Three Strikes Reform Act, appellant filed a petition for recall of his sentence. This was denied by the superior court on June 27,

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

2016. The denial was affirmed by this court in *People v. Jackson* (April 17, 2017, B275830) (nonpub. opn.).<sup>2</sup>

In January 2018, appellant, acting in propria persona, filed a motion, again seeking recall of his sentence and resentencing under Proposition 36. In addition, appellant sought relief under Proposition 57, The Public Safety and Rehabilitation Act of 2016, enacted by the voters in November 2016. (See *People v. Dynes* (2018) 20 Cal.App.5th 523, 526.) Proposition 57 added section 32 to article I of the California Constitution, which now provides that any person convicted of “a nonviolent felony offense” and sentenced to state prison “shall be eligible for parole consideration after completing the full term for his or her primary offense,” and directs the Department of Corrections and Rehabilitation (CDCR) to “adopt regulations in furtherance of these provisions.”

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<sup>2</sup> As we explained there, Proposition 36 “added section 1170.126 to the Penal Code, creating a post-conviction proceeding whereby an incarcerated third strike offender . . . may petition to have his or her sentence recalled and be resentenced as a second strike offender.” However, “[s]ection 1170.12, subdivision (c)(2)(C)(iii) provides in pertinent part that an inmate is not eligible for more lenient sentencing if the prosecutor pled and proved that ‘[d]uring the commission of the current offense, the defendant . . . was armed with a firearm . . . .’” We concluded appellant was armed with a firearm within the meaning of the provision, as he was seen dropping two guns out the window of a car. (See *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1029 [“‘Armed with a firearm’ has been statutorily defined and judicially construed to mean having a firearm available for use, either offensively or defensively”], disapproved in part on another ground in *People v. Frierson* (2017) 5 Cal.4th 225.)

Appellant's motion contended the CDCR deviated from the intent and scope of Proposition 57 by excluding from parole consideration inmates such as himself, serving a life term with the possibility of parole for an offense that was not a violent felony under section 667.5, subdivision (c).<sup>3</sup> Appellant's motion was deemed a petition for writ of habeas corpus and assigned to the criminal writs center. The court in the department to which it was assigned issued two orders on February 2, 2018. In the first, the court denied the motion to the extent it was based on Proposition 36, because appellant's petition for recall of sentence pursuant to section 1170.126 had previously been denied, and the

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<sup>3</sup> Following the adoption of Proposition 57, the CDCR adopted or amended certain regulations. Section 3490(a)(3) of title 15 of the California Code of Regulations provides: "For the purposes of this article . . . [¶] . . . [a]n inmate is a 'nonviolent offender' if none of the following are true: [¶] . . . [¶] (3) The inmate is currently incarcerated for a term of life with the possibility of parole for a 'violent felony.'" Section 3490(c) defines "[v]iolent felony" as "a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code." Section 3491(a) of title 15 provides: "A nonviolent offender, as defined in subsection 3490(a) and 3490(b), shall be eligible for parole consideration by the Board of Parole Hearings under article 15 of chapter 3 of division 2 of this title." However, section 3491(b) provides: "Notwithstanding subsection (a) [stating that a nonviolent offender shall be eligible for parole consideration], an inmate is not eligible for parole consideration by the Board of Parole Hearings under article 15 of chapter 3 of division 2 of this title if any of the following apply: [¶] (1) the inmate is currently incarcerated for a term of life with the possibility of parole for an offense that is not a violent felony or the inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for an offense that is not a violent felony."

denial affirmed on appeal. The second order expressed the court's conclusion that to the extent appellant's motion was based on Proposition 57, appellant's claim for relief was "civil in nature because he seeks to void the Proposition 57 regulations as applied to all inmates within a defined class." Accordingly, the court ordered the Proposition 57 portion of appellant's petition transferred to the civil division.

Appellant noticed an appeal of the February 2, 2018 orders. His court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441. Upon review, we observed a potential issue and asked the parties to submit letter briefs addressing whether the court in the criminal writs center erred in concluding appellant's petition seeking relief under Proposition 57 was civil in nature and transferring the matter to the civil division.

The parties submitted briefs stating they are in agreement that a petition for habeas corpus is an appropriate vehicle for a prisoner challenging CDCR rules to "vindicate[e] rights to which he is entitled in confinement." (*In re Jordan* (1972) 7 Cal.3d 930, 932 [habeas petition proper where prisoner challenged validity of Department of Corrections rule forbidding confidential correspondence by an inmate with his attorney]; compare *In re Edwards* (2018) 26 Cal.App.5th 1181 [resolving validity of Proposition 57 regulations adopted by CDCR challenged by prisoner's petition for habeas corpus], with *Villery v. Dept. of Corrections & Rehabilitation* (2016) 246 Cal.App.4th 407, 410-411 [writ of mandamus appropriate to compel CDCR to follow its own regulations].) Accordingly, to the extent appellant seeks relief under Proposition 57, we reverse the February 2, 2018 order

transferring the matter to the civil division, and remand the matter for determination of appellant's petition by the criminal writs center.

To the extent appellant sought relief under Proposition 36, the Three Strikes Reform Act, this court has examined the entire record, and is satisfied no arguable issues exist. Appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the order. (*Smith v. Robbins* (2000) 528 U.S. 259, 278.) We, therefore, affirm the February 2, 2018 order denying relief under Proposition 36, the Three Strikes Reform Act.

#### **DISPOSITION**

Affirmed in part, reversed in part and remanded with directions.

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MANELLA, P. J.

We concur:

COLLINS, J.

MICON, J.\*

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\*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.