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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.

RONALD DAVE RENTERIA,

Defendant and Appellant.

B280477

(Los Angeles County  
Super. Ct. No. KA038347)

APPEAL from an order of the Superior Court of Los Angeles County. Steven D. Blades, Judge. Affirmed.

Ronald Dave Renteria, in pro. per.; Jonathan B. Steiner and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

In the underlying action, the trial court denied appellant Ronald Dave Renteria's motion under Penal Code section 1170.126, which permits specified defendants sentenced as three strike offenders to be resentenced pursuant to the Three Strikes Reform Act of 2012 (Reform Act).<sup>1</sup> After an appeal was noticed from that ruling, appellant's court-appointed counsel filed an opening brief raising no issues, and appellant submitted a supplemental brief. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude that no arguable issues exist, and affirm the denial of the petition for resentencing.

## **RELEVANT FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

In 1998, a jury convicted appellant of carjacking (§ 215, subd. (a)) and escape from custody without use of force or violence (§ 4532, subd. (b)). In connection with the carjacking conviction, the jury found true a special allegation that appellant used a gun in the commission of the offense

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

<sup>2</sup> As the opening brief refers to our opinion in appellant's appeal from his judgment of conviction, we take judicial notice of that opinion (*People v. Renteria* (Oct. 26, 2000, B129379) [nonpub. opn.]). (Evid. Code, §§ 452, subd. (a), 459; see *People v. Lockwood* (2013) 214 Cal.App.4th 91, 95, fn. 2.) Our statement of facts is based, in part, on that opinion.

(former § 12022.5, subd. (a)(2)). After finding that appellant had suffered two strikes under the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) in 1989, the trial court imposed an aggregate term of 69 years to life, which included a 27-year term for the carjacking conviction under the Three Strikes law, a 10-year term for the associated gun use enhancement, and a term of 25 years to life for the escape from custody conviction under the Three Strikes law.<sup>3</sup>

In 2012, the electorate enacted the Reform Act by approving Proposition 36. (*People v. Yearwood* (2013) 213 Cal.App.4th 161, 167-170.) The Reform Act amended the Three Strikes law to provide that absent specified exceptions, an offender with two or more prior strikes is to be sentenced as a two strike offender unless the new offense also is a strike, that is, a serious or violent felony.<sup>4</sup> (See *ibid.*) The Reform Act also added section 1170.126, which creates a postconviction resentencing proceeding for specified inmates sentenced under the prior version of the Three Strikes law. (*Ibid.*)

The limited record before us discloses that prior to

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<sup>3</sup> The trial court also imposed a five-year enhancement for a prior serious felony conviction and two one-year enhancements for two prior felony drug convictions.

<sup>4</sup> Generally, an offense is a “strike” if it is either a “violent felony” under section 667.5, subdivision (c), or a “serious felony” under section 1192.7, subdivision (c). (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1525.)

filing the petition at issue here, appellant sought relief from his sentence in the superior court. In December 2013, appellant filed a petition for resentencing under section 1170.126, which was denied. In December 2015, relying on *People v. Johnson* (2015) 61 Cal.4th 674 (*Johnson*), appellant filed a petition for resentencing on his escape from custody conviction, which is pending in superior court.<sup>5</sup> Later, in June 2016, appellant filed an unsuccessful petition for a writ of habeas corpus.

In January 2017, appellant submitted the instant petition for resentencing under section 1170.126. Appellant contended that his carjacking conviction involved neither a serious nor violent crime, that the gun use enhancement was based on perjured and inadmissible testimony, and that the trial court was required to evaluate whether he, in fact, used a gun while committing the carjacking. In support of the petition, appellant offered evidence intended to show that his counsel had raised inadequate challenges to his sentence in the superior court.

On January 13, 2017, the trial court denied the petition, concluding that appellant had shown no basis for relief. Additionally, the court stated that appellant reasserted contentions rejected in a prior writ proceeding, improperly asserted new contentions that could have been

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<sup>5</sup> In *Johnson*, our Supreme Court concluded that under section 1170.126, an inmate convicted of both a strike and a nonstrike may be eligible for resentencing with respect to the nonstrike. (*Johnson, supra*, 61 Cal.4th at p. 695.)

raised in the prior writ proceeding or in his appeal, and made no showing of ineffective assistance of counsel. This appeal followed.

## DISCUSSION

After an examination of the record, appellant's court-appointed counsel filed an opening brief raising no issues and requesting this court to review the record independently pursuant to *Wende*. In addition, counsel advised appellant of his right to submit by supplemental brief any contentions or argument he wished the court to consider. In response, appellant submitted a supplemental brief and other documents.

Our independent review of the record discloses no error in the trial court's determination that appellant is ineligible for resentencing under section 1170.126. That statute establishes a tightly confined procedure enabling specified defendants serving three strike sentences to seek resentencing. (*People v. Brown* (2014) 230 Cal.App.4th 1502, 1509-1512.) Under the statute, a court may not resentence defendants unless they meet the specified eligibility criteria. (*Id.* at pp. 1511-1512.) The court has no discretion to depart from those criteria, and "if the inmate does not satisfy one or more of [them], section 1170.126 grants the . . . court no power to do anything but deny the petition for recall of sentence." (*Ibid.*, italics deleted.)

The trial court's inquiry regarding the eligibility criteria is similarly limited. (*People v. Bradford* (2014) 227

Cal.App.4th 1322, 1336-1337.) The court’s task is to make a factual determination regarding eligibility, based on an examination of the record of conviction. (*Id.* at pp. 1336-1340.) Although the defendant is entitled to submit briefing on the question of eligibility, the court is not obliged to hold a formal hearing on that issue, and is not permitted to take new evidence. (*Id.* at pp. 1337-1342.)

The record establishes that appellant is ineligible for resentencing for two independent reasons. Under section 1170.126, an inmate is eligible for resentencing if he or she is serving an indeterminate term of life imposed under the Three Strikes Law “for a conviction of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of [s]ection 667.5 or subdivision (c) of [s]ection 1192.7.” (§ 1170.126, subd. (e)(1); *People v. Brimmer* (2014) 230 Cal.App.4th 782, 788.) Appellant does not satisfy that requirement because the offense for which he received the three strikes sentence -- namely, his conviction for carjacking -- is defined as a violent felony in subdivision (c)(17) of section 667.5.

Appellant also falls outside the scope of section 1170.126 for another reason. Under that statute, an inmate is ineligible for resentencing if “[d]uring the commission of the current offense [that is, the offense which the resentencing petition targets], the [inmate] used a firearm, [or] was armed with a firearm . . . .” (§§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii), 1170.126, subd. (e)(2).) Because a jury found that appellant “use[d] a firearm

in the commission of the [carjacking]” (former § 12022.5, subd. (a)(2)), he is subject to that exclusion. (*People v. Quinones* (2014) 228 Cal.App.4th 1040, 1044 [jury’s finding that defendant was personally armed with gun during commission of offenses established his ineligibility under the firearm-related exclusion].)

Appellant’s supplemental brief challenges the application of the firearm-related exclusion, arguing that the jury’s gun use finding fails for want of sufficient evidence, and that the evidence submitted at trial in support of the gun use enhancement was perjured and inadmissible. In support of those contentions, appellant has submitted evidence not presented to the trial court, including declarations attacking the evidence presented at trial.

Appellant’s challenges identify no arguable issues regarding the trial court’s denial of his petition for resentencing. They raise no possibility of reversible error because they do not address his ineligibility for resentencing based on the carjacking conviction. Furthermore, they raise no issues cognizable on appeal relating to his ineligibility based on the jury’s gun use finding. To the extent appellant asserts that the gun use finding relied on inadmissible evidence or fails for want of sufficient evidence, those contentions could have been presented in his appeal from the judgment of conviction, and thus may not be raised in this appeal. (*People v. Howerton* (1953) 40 Cal.2d 217, 220.) To the extent appellant attacks the finding on the basis of evidence not submitted to the trial court, that evidence may

not be considered on appeal. (*People v. Sanders* (1990) 221 Cal.App.3d 350, 362.) In sum, because the record demonstrates that appellant's petition for resentencing was properly denied, we conclude that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)<sup>6</sup>

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<sup>6</sup> For similar reasons, we decline to treat appellant's submissions to this court as a petition for writ of habeas corpus. Generally, to secure relief by writ of habeas corpus, a petitioner "bears a heavy burden initially to plead sufficient grounds for relief, and then later to prove them." (*People v. Duvall* (1995) 9 Cal.4th 464, 474, italics omitted.) Here, appellant's submissions lack even minimal factual allegations suggesting his entitlement to relief, as they do not challenge his ineligibility for resentencing based on his carjacking conviction.



**DISPOSITION**

The order of the trial court is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.