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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.

JESSIE JOE ADAMS,

Defendant and Appellant.

B280022

(Los Angeles County
Super. Ct. No. BA408604)

APPEAL from a judgment of the Superior Court of Los Angeles County, William N. Sterling, Judge. Affirmed.

Law Offices of Joy Maulitz and Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jessie Joe Adams appeals from an order of the trial court denying his motion for modification of his sentence under Proposition 57 and the California Constitution. Appellant's counsel on appeal filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)) requesting that we conduct an independent review of the record. We have done so and conclude that no arguable issues exist. Accordingly, we affirm.

BACKGROUND¹

On March 4, 2013, appellant demanded money from a man setting up a cart to sell tamales on a street in Los Angeles. The man stated that he did not have money but offered appellant a tamale. Appellant threw the tamale cart and the man to the ground and beat the man, stating that he would kill him if he did not give him money. Appellant ran away when he heard police coming. Police officers located appellant and asked the victim to identify him.

On June 12, 2013, appellant was charged by information with one count of attempted second degree robbery (Pen. Code, §§ 664/211)² and one count of criminal threats (§ 422, subd. (a)). The information further alleged that appellant had served five prior prison terms (§ 667.5, subd. (b)) and suffered two prior offenses that qualified as strikes (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and as serious or violent felonies (§ 1170, subd. (h)(3)).

¹ Because the conviction was obtained by a nolo contendere plea, the facts are taken from the preliminary hearing transcript.

² Unspecified statutory references are to the Penal Code.

On September 27, 2013, appellant entered a plea of nolo contendere to the charge of attempted second degree robbery and admitted to a prior conviction, which counted as a strike and a prior serious felony. The criminal threats charge was dismissed. Appellant was sentenced to the mid term of two years, doubled pursuant to the Three Strikes law, plus a five year enhancement for a prior serious felony (§ 667, subd. (a)(1)), for a total of nine years.

On November 22, 2016, appellant moved for modification of his sentence pursuant to Proposition 57 and the California Constitution. He argued that Proposition 57 authorized the trial court “to strike a prior sentence in the furtherance of justice.” Appellant asked the court to strike the five-year enhancement imposed under section 667, subdivision (a)(1) and order his release. The trial court dismissed the motion, stating that Proposition 57 “only provides an inmate who has completed his base term with a hearing before the Board of Parole Hearings” and did not give such authority to the Superior Court. Appellant appealed from the denial of the motion.

DISCUSSION

After reviewing the record, appellant’s court-appointed counsel filed an opening brief requesting that this court independently review the record pursuant to *Wende*. On April 4, 2017, we informed appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No supplemental brief has been filed to date.

Proposition 57, also known as “The Public Safety and Rehabilitation Act of 2016,” was adopted on November 8, 2016, and became effective the following day. (*People v. Superior Court (Walker)* (2017) 12 Cal.App.5th 687, 690, fn. 1 (*Walker*).) As pertinent to this appeal, “Proposition 57 . . . amended article I, section 32 of the California Constitution governing the consideration of parole and the earning of behavior credits in state prison,” making two changes.³ (*Id.* at p. 694, fn. 8.) First, the Constitution now requires that “[a]ny person convicted of a nonviolent felony offense and sentenced to state prison . . . be eligible for parole consideration after completing the full term for his or her primary offense.” (Cal. Const., art. I, § 32, subd. (a)(1).) For these purposes, a “full term for the primary offense means the longest term of imprisonment imposed . . . for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.” (*Id.*, subd. (a)(1)(A).) Second, the Constitution now requires the “Department of Corrections and Rehabilitation . . . to award credits earned for good behavior and approved rehabilitative or educational achievements.” (*Id.*, subd. (a)(2).)

Proposition 57 creates a mechanism for parole consideration, not a vehicle for resentencing. Any determination as to appellant’s right to parole under Proposition 57 must be made, in the first instance, by the

³ Proposition 57 also amended the Welfare and Institutions Code section to make changes that include requiring a prosecutor to make a motion for transfer in the juvenile court in order to prosecute a juvenile offender as an adult. (See *Walker, supra*, 12 Cal.App.5th at pp. 694-695.)

appropriate agency. Therefore, the trial court properly dismissed appellant's motion.

We have independently reviewed the record and conclude that there are no arguable issues on appeal. (See *Wende, supra*, 25 Cal.3d at pp. 441–442; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278–279 [upholding the *Wende* procedure].)

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.