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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS MADRIGAL,

Defendant and Appellant.

B279876

(Los Angeles County
Super. Ct. No. PA034266)

APPEAL from an order of the Superior Court of
Los Angeles County, Daniel B. Feldstern, Judge. Affirmed.

Sunnie L. Daniels, under appointment by the Court of
Appeal for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Following a suitability hearing under the Three Strikes Reform Act of 2012, enacted by the voters as Proposition 36 (Pen. Code, § 1170.126),¹ the trial court found Jose Luis Madrigal posed an unreasonable risk of danger to public safety and denied his petition for recall of his prison sentence and request for resentencing. Almost a year later, Madrigal petitioned for reconsideration. The court denied the petition. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In September 1999 police officers on routine patrol asked to speak with Madrigal, who was sitting on a couch on the front porch of his apartment complex. Before joining the officers on the sidewalk, Madrigal spit a rock of cocaine base onto the ground. From outside Madrigal's apartment, the officers saw a peppershaker containing rocks of cocaine sitting on an aquarium by the open front door.

In February 2000 Madrigal was convicted of possession for sale of cocaine base in violation of Health and Safety Code section 11351.5. In a bifurcated proceeding, the trial court found Madrigal had suffered three prior serious felony convictions for residential burglary within the meaning of the three strikes law (§§ 667, subds. (b)-(i); 1170.12). The court sentenced Madrigal to a prison term of 25 years to life.²

¹ Undesignated statutory references are to the Penal Code.

² We affirmed the conviction in *People v. Madrigal* (Jan. 10, 2001, B140308) [nonpub. opn.].

On March 29, 2013 Madrigal filed a petition for recall of his sentence and resentencing under Proposition 36, which amended the three strikes law to provide that a defendant is not subject to an indeterminate life term for a third strike felony that is neither serious nor violent, unless the offense satisfies other criteria identified in the statute.³ The amendments also allow inmates previously sentenced to indeterminate terms under the three strikes law to petition for recall of their sentences and for resentencing to the term that the court would have imposed for their crime had they been sentenced under the new sentencing provisions. (§ 1170.126, subd. (a).)

Madrigal argued in his petition that the court should resentence him to a 10-year determinate term as a second-strike offender because his conviction for possession for sale of cocaine base was not a serious or violent felony or a disqualifying offense under Proposition 36 (§§ 667, subd. (e)(2)(C); 1170.12, subd. (c)(2)(C)) and he did not pose an unreasonable risk of danger to

³ Prior to Proposition 36, the three strikes law provided that a defendant convicted of two prior serious or violent felonies would be subject to an indeterminate life sentence of at least 25 years to life upon conviction of a third felony, even if that felony was not serious or violent. (See *People v. Conley* (2016) 63 Cal.4th 646, 652; *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1285-1286.) Proposition 36 changed the law so that a defendant with two prior qualifying serious or violent felony convictions is not subject to an indeterminate life sentence as a third strike offender when the current offense is neither serious nor violent (§ 1170.126, subd. (e)(1)) and does not meet one of the criteria in section 667, subdivision (e)(2)(C)(i)-(iii) (§ 1170.126, subd. (e)(2)), and none of the defendant's prior strike convictions was for one of the offenses listed in section 667, subdivision (e)(2)(C)(iv) (§ 1170.126, subd. (e)(3)).

public safety. Following a suitability hearing, the trial court found Madrigal posed an unreasonable risk of danger to public safety and denied his petition on December 29, 2015.

On October 13, 2016, Madrigal, representing himself, filed a “Petition for Resentencing and People’s Response.” In this petition Madrigal contended the trial court erred by failing to apply the narrow definition of “unreasonable risk of danger to public safety” contained in the more recently enacted Proposition 47 (§ 1170.18), which reduced certain nonviolent felony offenses to misdemeanor offenses and permitted, under appropriate circumstances, resentencing of qualified offenders. Madrigal argued the trial court therefore should reconsider his March 29, 2013 petition for recall of sentence under Proposition 36.

The trial court denied Madrigal’s petition. Madrigal filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Madrigal in this appeal. After reviewing the record, counsel filed an opening brief raising no issues. On August 21, 2017 we advised Madrigal he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted us to consider. We have not received a response.

We have examined the record and are satisfied appellate counsel for Madrigal has complied with counsel’s responsibilities and there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.) In *People v. Valencia* (2017) 3 Cal.5th 347,

352 the California Supreme Court held the limited definition of unreasonable risk of danger to the public in Proposition 47 does not apply to petitions for resentencing under Proposition 36. (*Id.* at p. 375.)

DISPOSITION

The order is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

BENSINGER, J.*

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