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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE

Plaintiff and Respondent,

v.

JEFFREY LARUE LOGAN,

Defendant and Appellant.

B271723

(Los Angeles County  
Super. Ct. No. SA024008)

APPEAL from an order of the Superior Court of  
Los Angeles County, William C. Ryan, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

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Appellant Jeffrey Larue Logan appeals from an order denying with prejudice his Proposition 36 petition for a recall of sentence (Pen. Code, § 1170.126, subd. (b)) after the trial court sentenced him to prison for a total unstayed term of 25 years to life, plus three years, following his convictions by jury for transporting a controlled substance (Health & Saf. Code, § 11352, subd. (a); count 1) and possessing cocaine base for sale (Health & Saf. Code, § 11351.5; count 2) with findings as to each offense he was personally armed with a firearm (Pen. Code, § 12022, subd. (c)), and for possession of a firearm by a felon (former Pen. Code, § 12021, subd. (a); count 3) and transporting not more than an ounce of marijuana (Health & Saf. Code, § 11360, subd. (b); count 4). He admitted he had suffered two prior felony convictions under the Three Strikes law (Pen. Code, § 667, subd. (d)) and had served three prior prison terms (Pen. Code, § 667.5, subd. (b)).<sup>1</sup> We affirm the order denying with prejudice appellant's Proposition 36 petition for a recall of sentence.

***FACTUAL and PROCEDURAL SUMMARY***

1. *The Present Offenses.*

The record reflects that on December 5, 1995, appellant was driving a van and Santa Monica Police Officer Ronald Franzen stopped appellant for speeding. Appellant did not have a driver's license but gave his name to Franzen, who relayed the information to a dispatcher. A woman was seated in the rear portion of the van. Appellant indicated she was his wife and she did not have a driver's license. Based on information Franzen later received from the dispatcher, he arrested appellant. Appellant had a pager clipped to his belt.

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

Franzen decided to impound the van, and he and other officers conducted an inventory search of the van. Franzen found, “in the headliner directly above and slightly to the rear of the driver’s seat,” a loaded .38-caliber handgun. This was within arm’s reach of appellant. A baggie was next to the handgun. The baggie contained two smaller baggies, and each of the two contained chunks of cocaine. Another baggie found in the same area contained numerous smaller pieces of a substance containing rock cocaine. An officer searched the passenger and rear areas of the van and found, under cushions, two ziplock baggies containing what appeared to be marijuana. A medicine chest contained a razor blade, ziplock baggies, and packaging material for narcotics. An officer found a calculator and pager in the glove compartment. During a booking search, Franzen found in two pockets of appellant \$810, and \$44, in cash, respectively.

On October 18, 1996, a jury convicted appellant on counts 1 through 4 as previously indicated. On January 22, 1997, appellant admitted prior conviction allegations as previously indicated. On that date, the court sentenced him to prison on count 1 to 25 years to life pursuant to the Three Strikes law for the transportation offense, plus three years for its firearm enhancement (§ 12022, subd. (c)). The court sentenced appellant on each of counts 2 and 3 to 25 years to life in prison pursuant to the Three Strikes law, struck the section 12022, subdivision (c) enhancement pertaining to count 2, and, pursuant to section 654, stayed execution of sentence on each of counts 2 and 3, pending

completion of appellant's sentence on count 1. The court dismissed count 4 pursuant to section 1385.<sup>2</sup>

*2. The Petition for a Recall of Sentence and Related Proceedings.*

On April 24, 2014, appellant filed in the underlying superior court case (case No. SA024008), a Proposition 36 petition for a recall of sentence (petition) (§ 1170.126, subd. (b)). Under Proposition 36, a prisoner is ineligible for relief under that initiative if, “[d]uring the commission of the current offense, the defendant . . . was armed with a firearm” within the meaning of section 667, subdivision (e)(2)(C)(iii). (§ 1170.126, subds. (e)(2) & (f).) In the petition, in relevant part, appellant “suggested” that the above quoted language required that appellant have “*personal use* of a weapon” and he argued there was insufficient evidence that he had “ready access” to the subject firearm.

On May 2, 2014, the trial court issued an order to show cause. On June 16, 2014, the People filed an opposition. On January 20, 2016, appellant filed a reply. In the reply, in relevant part, appellant argued that there was insufficient evidence the subject firearm was “available for use” by appellant. On March 26, 2016, the People filed exhibits in the matter. At the March 28, 2016 hearing on the petition, appellant argued, in relevant part, that in order to be “armed with a firearm” within the meaning of section 667, subdivision (e)(2)(C)(iii), and thus ineligible for Proposition 36 relief, he had to be “personally” armed with a firearm and, *People v. White* (2014) 223 Cal.App.4th 512 (*White*), which concluded the contrary, was wrongly decided.

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<sup>2</sup> Appellant admitted four prior felony convictions constituting three section 667.5, subdivision (b) enhancements. The court struck the three enhancements for purposes of sentencing only.

Following argument, the trial court stated it was bound by *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, “to follow *White*, [*People v. Osuna* (2014) 225 Cal.App.4th 1020 (*Osuna*)] and [*People v. Blakely* (2014) 225 Cal.App.4th 1042 (*Blakely*)].” The court then stated, “[s]o I think constructi[ve] possession, coupled with readily available, is enough to make you ineligible. And, certainly, he was in constructive possession. It wasn’t on his person, but it was within reach in the van, in the headliner. So I think that is enough. [¶] And I find that, in this particular case, because of the jury’s finding, I find by beyond a reasonable doubt that he was armed with a firearm within the meaning of Prop. 36 and he’s thereby ineligible.”

The court admitted the exhibits into evidence and later stated, “On the basis of the submissions and the argument of counsel, the court finds that the [petitioner is] statutorily ineligible for recalling and resentencing pursuant to Penal Code section 1170.126 because, during the commission of the crime offenses, he was armed with a firearm. [¶] Accordingly, the petition for recall and resentence is denied with prejudice pursuant to Penal Code sections 1170.126[, subdivision] (e)(2) and 667[, subdivision] (e)(2)(C)(iii). And I make that finding beyond a reasonable doubt. That’s the order.” The court later reiterated it was finding appellant was “armed with a firearm as to all three” convictions (counts 1 through 3). On April 21, 2016, appellant filed a notice of appeal.

### ***CONTENTIONS***

After examination of the record, appointed appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. On August 24, 2016, the clerk of this court advised appellant to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received to date.

### ***REVIEW ON APPEAL***

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *Blakely, supra*, 225 Cal.App.4th at pp. 1051, 1054 ["armed with a firearm" within the meaning of sections 667, subdivision (e)(2)(C)(iii) and 1170.12, subdivision (c)(2)(C)(iii) means "having a firearm available for use, either offensively or defensively"]; *Osuna, supra*, 225 Cal.App.4th at pp. 1029, 1035 [same]; *White, supra*, 223 Cal.App.4th at p. 524 [" "it is the availability—the ready access—of the weapon that constitutes arming" ' '"]; see *People v. Yearwood* (2013) 213 Cal.App.4th 161, 167-168.)

***DISPOSITION***

The order denying with prejudice appellant's petition for a recall of sentence is affirmed.

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GOSWAMI, J.\*

We concur:

EDMON, P. J.

ALDRICH, J.

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