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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

EARVIN JONES,

Defendant and Appellant.

B276279

(Los Angeles County  
Super. Ct. No. BA161964)

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

Jonathan B. Steiner and Cheryl Lutz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1998, the Los Angeles County District Attorney charged defendant Earvin Jones (defendant) with (1) attempted willful, deliberate, premeditated murder (Pen. Code, §§ 664, 187(a)),<sup>1</sup> (2) conspiracy (§ 182(a)(1)), and (3) possession of a firearm after sustaining two prior convictions (§ 12021(a)(1)). The charges were predicated on evidence that defendant was one of two men who drove up to a house, got out of a car, and started shooting at a man who had been standing in front of the house. During the car chase that followed the shooting, police officers observed three guns being tossed from the car.

The charges were tried to a jury, which found defendant guilty of the felon in possession of a firearm charge but did not reach a verdict on the attempted murder or the conspiracy charges (those were later dismissed). Defendant waived his right to have the jury determine the truth of associated allegations that he had sustained two prior felony convictions within the meaning of the Three Strikes law (§§ 667(b)-(i), 1170.12), and the court found the allegations true. The trial court imposed a sentence of 25 years to life, and this court subsequently affirmed defendant's conviction and sentence on appeal. (*People v. Jones* (Apr. 21, 2000, B128161) [nonpub. opn.] )

Years later, in 2013, defendant petitioned to recall his felon in possession of a firearm sentence pursuant to section 1170.126, which was enacted in 2012 as part of Proposition 36, the Three Strikes Reform Act. The District Attorney opposed the petition, arguing defendant was ineligible for Proposition 36 relief because he was armed during the commission of the commitment offense

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

and because he intended to cause great bodily harm to another person during the commission of that offense.

The trial court held a hearing to determine whether defendant was eligible for Proposition 36 relief. After hearing argument from both sides, the trial court found beyond a reasonable doubt that defendant was not eligible to have his felon in possession of a firearm sentence recalled because he was armed with a firearm during the commission of the felon in possession of a firearm offense. (§§ 667(e)(2)(C)(iii), 1170.12(c)(2)(C)(iii), 1170.126(e)(2); see also, e.g., *People v. Brimmer* (2014) 230 Cal.App.4th 782, 797-799.) The trial court accordingly denied defendant's petition for resentencing.

Defendant filed a timely notice of appeal. We appointed counsel to represent defendant. After examining the record, counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, that raises no issues. On February 15, 2017, this court advised defendant he had 30 days to personally submit any contentions or issues he wished us to consider. We received no response.

We have examined the record and are satisfied defendant's attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24; *Wende*, 25 Cal.3d at 441.)

DISPOSITION

The order denying defendant's section 1170.126 petition is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIN, 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.