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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DARNELL GODFREY, Defendant and Appellant.	B277245 (Los Angeles County Super. Ct. No. YA026763)

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

California Appellate Project, Jonathan B. Steiner, Executive Director and Joshua Schraer, Staff Attorney, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to Proposition 36, Darnell Godfrey (appellant) filed a petition to recall an indeterminate life sentence under the "Three Strikes" law, and to be resentenced as a second strike offender. His petition was denied because he was armed with a firearm during his current offense, which was being a felon in possession of a firearm. On appeal, he urges us to depart from existing precedent that makes him ineligible for resentencing. We find no basis to depart from existing precedent. Accordingly, we affirm the order.

FACTS

On December 5, 1995, Sergeant Randall Dickey and Deputy David M. Carver of the Los Angeles County Sheriff's Department saw appellant commit various traffic violations and followed him to a residence. In the driveway of the residence, Deputy Carver apprehended appellant and recovered a stolen gun from his jacket pocket. In addition, Deputy Carver recovered 47.7 grams of marijuana from the vehicle appellant had been driving.

While Sergeant Dickey was escorting appellant to the patrol car, he said, "I want to thank that deputy for not shooting me. I had the gun in my hand. He could have shot me."

A jury convicted appellant of possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1), count 1),[1] receiving stolen property (§ 496, subd. (a), count 2), and possession of marijuana (Health & Saf. Code, § 11357, subd. (b), count 3). In a bifurcated proceeding, the trial court found true the allegations that appellant had three prior convictions for serious or violent offenses within the meaning of the Three Strikes law (§§ 667,

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

subds. (b)-(i) & 1170.12, subds. (a)-(d)), and that he had suffered three prior prison terms for purposes of enhancements pursuant to section 667.5, subdivision (b). The trial court sentenced appellant to an indeterminate term of 25 years to life on count 1. As for count 2, the trial court imposed a concurrent midterm sentence of two years. The trial court stayed the three one-year section 667.5, subdivision (b) enhancements. Regarding count 3, the trial court imposed a $100 fine.

In December 2012, after the enactment of Proposition 36, appellant petitioned to recall his sentence pursuant to section 1170.126.[2]

On August 23, 2016, the trial court denied the petition because appellant was armed during the commission of the current offense and was therefore ineligible for recall and resentencing.

This timely appeal followed.

DISCUSSION

Appellant contends he was eligible for relief under Proposition 36 even if he was armed while committing the offense of being a felon in possession of a firearm. The interpretation of a voter initiative is at issue. Our review is de novo. (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578.)

When interpreting a voter initiative, "we apply the same principles that govern statutory construction. [Citation.]" (*People v. Rizo* (2000) 22 Cal.4th 681, 685–686.) Regarding statutory construction, the first step is to examine the language at issue. If the language is unambiguous, the plain meaning

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[2] The trial court gave eight extensions of time for appellant to file a reply brief. The reply brief was filed on September 8, 2015.

controls. If the language is ambiguous—meaning that it supports more than one reasonable interpretation—then we may look to extrinsic aids. (*Natkin v. California Unemployment Ins. Appeals Bd.* (2013) 219 Cal.App.4th 997, 1003–1004.)

I. The Law.

In 1994, California enacted the Three Strikes law. (*People v. Valencia* (2017) 3 Cal.5th 347, 359.) Pursuant to that enactment, a defendant who committed a felony while having two prior serious or violent felony convictions had to be sentenced to "an indeterminate term of life imprisonment . . . ." (§§ 667, subd. (e)(2)(A), 1170.12, subd. (c)(2)(A).) It did not matter that the third felony was neither serious nor violent. (*People* v. *Johnson* (2015) 61 Cal.4th 674, 680.)

Effective November 7, 2012, Proposition 36 added section 1170.126 and amended sections 667 and 1170.12. (*People v. White* (2014) 223 Cal.App.4th 512, 517.) Pursuant to this new legislation, an inmate who is serving an indeterminate life sentence as a third strike offender can petition to be resentenced as a second strike offender. (§ 1170.126, subd. (b).) The inmate will be denied resentencing if (1) the current offense was serious or violent, (2) the prosecution establishes one of the four disqualifying exceptions to resentencing under Proposition 36, or (3) if the trial court determines, in its discretion, that resentencing the defendant would pose an unreasonable risk of danger to public safety. (§ 1170.126, subds. (e) & (f).)

One of the disqualifying factors is if "[d]uring the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person." (§§ 1170.126, subd. (e)(2), 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii).)

II. No Error.

Numerous cases establish that Proposition 36 disqualifies an inmate from being sentenced as a second strike offender if his or her third felony conviction is for being a felon in possession of a firearm, and if the evidence shows the firearm was available for use either offensively or defensively. (*People v. Osuna* (2014) 225 Cal.App.4th 1020, 1034; *People v. White* (2016) 243 Cal.App.4th 1354; *People v. White, supra,* 223 Cal.App.4th 512; *People v. Elder* (2014) 227 Cal.App.4th 1308; *People v. Brimmer* (2014) 230 Cal.App.4th 782; *People v. Hicks* (2014) 231 Cal.App.4th 275; *People v. Blakely* (2014) 225 Cal.App.4th 1042, 1048–1053.)

Appellant urges us to disagree with the cases cited above. We decline. Those cases are numerous, consistent and well-reasoned, and they comport with our own interpretation of Proposition 36. The plain meaning of "[d]uring the commission of the current offense" refers to an arming that happens at the same time the offense was committed. Nothing more is required.

Appellant had a firearm in his pocket during his current offense, and it was available for his use offensively or defensively. Thus, he was armed within the meaning of Proposition 36 and ineligible for resentencing.

DISPOSITION

The order is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
GOODMAN

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