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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.

ALONZO MCKINNEY

Defendant and Appellant.

B280346

(Los Angeles County
Super. Ct. No. BA140260)

APPEAL from an order of the Superior Court of
Los Angeles County, Laura Priver, Judge. Affirmed.

Sally Patrone Brajevich, under appointment by the Court of
Appeal, and Alonzo McKinney, in pro. per., for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

In this *Wende*¹ appeal, we affirm the denial of defendant Alonzo McKinney’s petition for resentencing under Proposition 57, the Public Safety and Rehabilitation Act of 2016. (Cal. Const., art. 1, § 32.)²

FACTUAL AND PROCEDURAL BACKGROUND

In *People v. McKinney* (Dec. 1, 1998, B115835) [nonpub. opn.]), we affirmed defendant’s conviction in the current case³ of assault with a deadly weapon or force likely to produce great bodily injury upon a peace officer, Robert Staggs, in violation of

¹ *People v. Wende* (1979) 25 Cal.3d 436.

² Section 32(a) of article 1 of the California Constitution provides: “The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:

“(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

“(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

“(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.”

³ Los Angeles County Superior Court case No. BA140260.

Penal Code section 245, subdivision (c) (count 1),⁴ and resisting an executive officer, Robert Staggs, in violation of section 69 (count 2). Based on defendant's prior serious felony convictions for robbery in May 1986⁵ and September 1988,⁶ the superior court imposed a Three Strikes sentence of 25 years to life. (§§ 211; 667, subd. (b)-(i); 1170.12, subds. (a)-(d).) Defendant is presently serving that sentence.

Following the approvals by California voters of Propositions 36 (§ 1170.126) and 47 (§ 1170.18), defendant filed petitions for relief under each initiative in the current case. His petition under Proposition 36 was denied in March 2013,⁷ and his petition under Proposition 47 was denied in February 2015.⁸ Those determinations are now final.

The present appeal is from the December 30, 2016 order denying defendant's motion for resentencing under Proposition 57. In its December 30, 2016 order, the superior court explained that defendant is not entitled to resentencing under Proposition 57 because that initiative "only provides an inmate who has

⁴ All further statutory references are to the Penal Code.

⁵ Los Angeles County Superior Court case No. A775937.

⁶ Los Angeles County Superior Court case No. A972586.

⁷ His *Wende* appeal from the March 2013 ruling was dismissed in September 2013 (B248013).

⁸ Defendant's habeas petition from the February 2015 ruling was denied in August 2015 (B264774).

completed his base term with a hearing before the Board of Parole Hearings (Cal. Const., art. 1, § 32(a)).”

On April 7, 2017, defendant’s appellate counsel, Sally P. Brajevich, moved to augment the record with superior court documents from several of defendant’s prior cases. Brajevich stated in relevant part that the additional documents included “the felony complaint, information, and *not guilty* verdicts in case number A775937 obtained from the archives (one of the two strikes used to enhance the sentence)” (Italics added.) Brajevich argued that “the jury verdicts from archives reveal appellant was found *not guilty* of robbery in case No. A775937. . . . Since only two strike[s] were alleged in this case (BA140260), and only one strike was valid, appellant should have received a second strike sentence of a doubled term, not a third strike sentence of 25 years-to-life. [Citation.]” (Italics added.)

We granted the motion to augment, partly in reliance on counsel’s assertion that defendant was found not guilty of robbery in case No. A775937. The additional documents were filed in this court on April 7, 2017.

On July 12, 2017, Brajevich filed a *Wende* brief that raised no issues. Inexplicably, the brief was silent as to counsel’s previous assertion that, due to the “not guilty” verdicts in case number A775937, the Three Strikes sentence in this case was illegal.

Defendant filed a supplemental brief on August 3, 2017, arguing his sentence was illegal because of the not guilty verdicts in case No. A775937. In his supporting declaration, defendant stated that “the clerk in case #775937 1986 stamp by the clerk 1986 not guilty.” He also provided a handwritten note from an unidentified person which stated, “You were found not guilty in

case [No.]A775937.” Defendant requested a lie detector test, and provided Internet news articles regarding the recent conviction of former Sheriff Lee Baca.

In his second supplemental brief, filed on August 18, 2017, defendant provided additional Internet news articles regarding former Sheriff Baca. He also attached the purported “not guilty verdicts” in the A775937 case (these are contained in the augmented record filed on April 7, 2017), and a subsequent unverified document (which is not part of the record in this case) purporting to reduce count 2 (receiving stolen property) in the A775937 case to a misdemeanor under Proposition 47. Based on these attachments, defendant argued he was found “not guilty” in the A775937 case, and that his crime (he did not specify which count) was a misdemeanor.

The first issue—that defendant received an unauthorized sentence—is one that may be raised at any time, because a sentence which is not authorized by law exceeds the jurisdiction of the court. (*People v. Neal* (1993) 19 Cal.App.4th 1114, 1164.) However, the claim is based on two unsigned “not guilty” verdicts in the A775937 case. Because both documents are unsigned, they are not the actual verdicts returned by the jury. Accordingly, the record does not support defendant’s contention that he received an unauthorized sentence in this case.

As to the second issue, there is no evidence that defendant’s conviction on count 1 (robbery) in the A775937 case was reduced to a misdemeanor. Defendant has provided an unverified document which purports to show that count 2 (receiving stolen property) in the A775937 case was reduced to a misdemeanor. Assuming that to be true, the reduction of count 2 to a misdemeanor does not assist defendant because count 2 was not

one of the prior strike convictions that supported his Three Strikes sentence in this case.

The other issues raised by defendant have no bearing on the denial of his motion for resentencing under Proposition 57. Because Proposition 57 does not provide for resentencing in the superior court, the motion was properly denied. Defendant's requests for a lie detector test and a rehearing based on the conviction of former Sheriff Baca are beyond the scope of the record.

We have reviewed the record under *People v. Kelly* (2006) 40 Cal.4th 106, and are satisfied that there are no arguable issues. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.