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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. JONATHAN BERNARD HURTH, Defendant and Appellant.	B279625 (Los Angeles County Super. Ct. No. YA051658)

APPEAL from a post–conviction order of the Superior Court for Los Angeles County, Rand S. Rubin, Judge. Affirmed.

Elizabeth K. Horowitz, 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 Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jonathan Bernard Hurth appeals from an order denying his petition for a recall of sentence under the Three Strikes Reform Act of 2012, commonly known as "Proposition 36." Defendant challenges the trial court's determination that he posed an unreasonable risk of danger to the public and was therefore not eligible for resentencing under Proposition 36. Finding no abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL SUMMARY

Defendant is serving a Three Strikes sentence of 25 years to life following his 2002 conviction by jury for second degree burglary (Pen. Code, § 459[1]), receiving stolen property (§ 496, subd. (a)), and having suffered two prior serious or violent felony convictions (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).) With regard to the third strike conviction, an eyewitness identified defendant as one of several men he saw loading items into a van from an uninhabited house from which the tenants had been evicted and locked out two days earlier. The tenants' property had been left behind in the house, into which there was a forced entry. (See *People v. Hurth* (Aug. 22, 2003, B162085 [nonpub. opn.].)

In November 2012, voters enacted Proposition 36, codified at section 1170.126. (*People v. Valencia* (2017) 3 Cal.5th 347, 354

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[1] Further undesignated statutory references are to the Penal Code.

(*Valencia*).) As relevant here, Proposition 36 created a procedure for inmates sentenced under the "Three Strikes" law for a nonserious, nonviolent felony to petition the trial court for resentencing. (§ 1170.126, subds. (e), (f); *Valencia,* at p. 354.) An eligible "inmate who is serving a third strike sentence that would have yielded a second strike sentence under Proposition 36's new sentencing rules 'shall be resentenced' as [a] second strike offender 'unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' [Citation.]" (*Valencia*, at p. 354; see § 1170.126, subd. (e).)

1. *The Petition and Suitability Hearing*

On December 14, 2012, after passage of Proposition 36, defendant petitioned the trial court for recall of sentence and a new sentence pursuant to section 1170.126. The District Attorney opposed the petition, conceding that, although defendant was eligible for resentencing, he was unsuitable for resentencing because he posed a current risk of danger to public safety. The parties filed voluminous exhibits. A suitability hearing was conducted on September 1, 2016, at which the court received the exhibits into evidence, and heard testimony from defendant and his expert witness, Richard Subia, a former warden with the California Department of Corrections and Rehabilitation.

2. *The Trial Court's Ruling*

On November 21, 2016, the court issued a 21–page memorandum of decision focused on whether defendant posed a current risk to public safety. The court found that defendant had a viable post-release plan that supported his release. That plan, however, was heavily outweighed by defendant's "criminal history, lack of insight, disciplinary record, CSRA score, and gang membership." The court concluded that "the totality of the record, including consideration of all the statutory factors, demonstrate[d] that resentencing [defendant] would pose an unreasonable risk of danger to public safety at this time." The court set forth its reasoning and the evidence in support of its conclusion.

a. *Defendant's Criminal History*

The court acknowledged that, although defendant's criminal history was an immutable factor, it was relevant to the court's assessment whether defendant posed a current risk of danger to public safety. (§ 1170.126, subd. (g)(1).) An inmate's minimization or denial of responsibility for a crime is probative of current dangerousness, because it reflects a lack of insight which, in turn, indicates that an inmate remains dangerous. (See *In re Ryner* (2011) 196 Cal.App.4th 533, 548–549 (*Ryner*); *In re Shaputis* (2011) 53 Cal.4th 192, 219 [an inmate's criminal history and current attitude re: that criminal conduct may both be significant predictors of inmate's future behavior in the event parole is granted].)

The court observed that defendant's criminal history reflected a 13–year string of violent property crimes, dating back to 1986 when he was 14 years old. Two juvenile petitions were sustained against him for robbery. During one of those robberies, defendant grabbed the victim's purse, knocked her to the ground and dragged her by the hair. When defendant was 15 years old, a juvenile petition was sustained against him for attempted robbery and assault with a firearm. He and a companion ordered a pizza, intending to rob the delivery boy. During the attempted robbery, defendant shot the victim in the stomach. Defendant denied he had intended to shoot the victim, and claimed the gun had accidentally discharged. He was committed to a camp community placement for nine months.

At age 17, defendant was convicted of attempted robbery with personal use of a firearm. He accosted two people on the street, yelling, "Give me your money, I have a gun!" A patrol car pulled up and he was arrested. Defendant was deemed unfit for juvenile proceedings, tried as an adult and sentenced to 40 months in prison in October 1989. He was paroled in July 1991.

In October 1993, defendant was convicted of possession of a controlled substance and sentenced to three years' probation and one year in county jail.

In March 1995, defendant was sentenced to six years in prison for first degree robbery. He had grabbed money from a woman on the sidewalk and, when her boyfriend approached, struck the boyfriend in the head with a brick. Defendant was charged with assault with a

deadly weapon and robbery, but convicted only of robbery. Defendant denied having hit the man with a brick.

Defendant was returned to custody four times between July 1998 and March 2001: (1) in July 1998, he suffered a parole violation, following an arrest for assault with a deadly weapon; (2) in June 1999, he was returned after an arrest for robbery; (3) in November 1999, he was returned to custody for receiving stolen property; and (4) in March 2001, he was returned after a parole violation following another arrest for robbery. Defendant's current life commitment offense was committed in 2002. Defendant denied any involvement in the burglary that led to his current commitment, and claimed that no witness identified him as a perpetrator, a claim the court found contradicted by the probation report.

b. *Disciplinary Record During Incarceration*

The court reviewed in detail defendant's disciplinary history during the recent period of incarceration.

Defendant had 11 serious rules violations reports (RVR's), six of which involved fighting during the three years preceding the suitability hearing. The RVR's for all six fighting incidents reflect that defendant ignored orders to stop fighting, and guards were forced to employ

pepper spray or grenades to stop the violence.[2] During his testimony, defendant acknowledged he had sometimes kept fighting after being

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[2] The 11 RVR's are:
March 14, 2003: Delaying a peace officer. Defendant participated in a protest by African-American inmates who felt oppressed by guards who kept them on lockdown and kept them from visiting the canteen. Protestors refused to relinquish food trays and covered their cell windows with paper.
June 24, 2005: Possession of inmate manufactured weapon. A plastic weapon made from a toothbrush was found among defendant's belongings, previously inventoried and stored in a locker after he had been moved to segregated housing. The court gave little weight to this incident because evidence showed defendant had not possessed the weapon, which was placed by another in his belongings.
June 1, 2007: Battery of another inmate resulting in no serious injury. Several inmates were fighting on a basketball court. Defendant was not a participant at first, but then he ran toward an inmate who belonged to the Bloods gang (who had been sitting on the court) and struck him in the face. Defendant refused to follow orders to stop fighting, and had to be subdued by guards. He was found guilty of battery on an inmate without serious injury.
August 13, 2008: Conduct which could lead to violence. A guard saw defendant and another inmate "squared off [against] one another" in a "fighting stance."
March 10, 2103: Fighting. Defendant and another inmate used their fists to strike one another in the chest and upper arms, ignoring orders to stop fighting, until they were subdued by blasts of pepper spray.
July 19, 2013: Fighting. Defendant and another inmate fought in the prison yard. Both men ignored an activated alarm and continued to fight until grenades were detonated.
April 30, 2014: Fighting. Defendant fought with another inmate in a housing unit, and other inmates tried to join the fight. A guard ordered the inmates to stop, but defendant and two others kept fighting until the guard fired a sponge round.
May 8, 2014: Fighting. Defendant and another inmate struck one another with their fists in the face and torso until a guard blasted them with pepper spray.
November 7, 2014: Fighting. An inmate rushed into defendant's cell and attacked him. Three rounds of pepper spray were required to stop the fight.

ordered to stop. He explained that he did so because an inmate remains exposed if he stops fighting and another inmate has a weapon. He also said it was not unusual to be pepper sprayed, because the guards sprayed everyone during fights, even the victim. Defendant denied having attacked other inmates.

Defendant testified that most of his fights were with members of his former gang, who "came after him" in retaliation for not participating in gang activities. The court's review of the record showed otherwise. The court concluded that only one RVR (from November 2014) contained evidence that defendant was attacked first, after another inmate rushed into his cell to start a fight. Defendant also claimed that a "couple" of the RVR's he received for fighting related to "racial riot[s]" he had been forced to "get in" to "defend [himself]." The court found no evidence in the RVR's that rioting occurring during any of defendant's fights with other inmates. Defendant also claimed he had been targeted by other inmates after the "R" suffix was affixed to his record in 2003.[3] Defendant's expert witness, Richard Subia, noted

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January 19, 2015: Fighting. Defendant fought with another inmate on the yard, and failed to stop after an alarm was activated and two guards ordered them to stop. Guards deployed grenades to stop the fight.
March 31, 2015: Conduct conducive to violence. Defendant and another inmate were trying to strike one another, when a guard ordered the entire prison yard down, and they assumed a prone position.

[3] An "R" suffix was a custody designation assigned to an inmate arrested for or convicted of a sex offense. Defendant received the designation after being accused of sodomizing another inmate in 1990 in Youth Authority (YA).

that inmates have a "wide web" and are easily able to "run a check" to determine which inmates are sexual offenders. The court observed that defendant's fights increased in frequency in 2013, 10 years after the "R" suffix was placed back on his record. Given Subia's representation that inmates had ready access to information about defendant's status as a sexual offender, defendant's claim that he was attacked on that basis, but not until 2013, did not ring true.

c. *Rehabilitation and Work Record*

Defendant obtained his GED while incarcerated. From 2002-2012, while housed at New Folsom, defendant consistently attended and helped arrange weekly worship services, bible studies, and choir rehearsal, and helped to facilitate the choir rehearsal and group bible studies. A prison chaplain observed that defendant's involvement and desire to grow spiritually had a positive effect on his life and those of his peers. Defendant acknowledged that, although he had limited access to work and programs at New Folsom, he could have participated in mail-order correspondence courses. Instead, he had chosen to spend his time in church and writing. He tried to take a vocational course, but the funding was cut.

The suffix was removed from his records upon his discharge from YA, but re-applied in 2003. Eventually, defendant was placed in segregated housing, but not until long after the "R" was reaffixed to his record in 2003. In the interim, he remained in shared cells where issues of assaultive behavior were raised against him.

Defendant began participating in self-help programming in earnest after filing his petition for resentencing. In 2014, he participated in a mental health life skills group, and was commended for his willingness to share his knowledge and insight with others. In 2015 defendant completed a number of self-study courses, and received a certificate of achievement for completing a program on crisis management. In 2016, he attended meetings for a gang prevention program, attended 10 AA/NA meetings, and completed 15 hours of substance abuse training.

Defendant worked on a recycling crew from August 2011 through March 2012, and as a porter from May 2012 through May 2014. In October 2015, he asked to be placed on a wait list for a job in laundry services.

d. *Classification and Static Risk Assessment Scores*

The CDCR assigns every inmate a "classification score." The lower the score, the lower the perceived security risk. The lowest score a life inmate may have is 19. At the time of the suitability hearing, defendant's most recent (October 2012) available score was 63. The court observed that a score above "63 is moderately elevated compared to other inmates seeking resentencing . . . who have successfully reduced their scores to 19 over the course of their incarceration." Given the fact that defendant had acquired seven RVR's since 2012, the vast majority of which involved fighting, the court noted that defendant's

current classification score had likely risen "well above 63," to a number "not supportive of release."

The CDCR uses the Static Risk Assessment (SRA), an actuarial tool that uses demographic and criminal history data to predict the risk of recidivism for an inmate after release. The score range is: one (low); two (moderate); three (high; drug); four (high; property); and five (high; violence). Most inmates with successful petitions for resentencing have an SRA score of one. Defendant's score was two, indicating he presented a moderate risk of incurring a felony arrest within three years of release. The court observed that, as a factor of age, recidivism rates for life–term inmates is much lower than for other prisoners. (*In re Stoneroad* (2013) 215 Cal.App.4th 596, 634.) At the time of his suitability hearing defendant was 44 years old. However, the court found that defendant's recent disciplinary record reflected that he was not "'aging out' of any significant risk of serious criminality upon release"; thus his age did not "tend to mitigate any risk of danger to public safety" and was "not supportive of release."

e. *Post-Release Plan*

Defendant had been offered housing and a volunteer clerk position through the Partnership for Reentry Program (PREP) program. As a clerk, defendant would gain work experience filing, writing letters, making phone calls and working with computers, at the same time he received help adjusting to life in the community. PREP guaranteed defendant an interview with a job developer, and offered to support him

until he had a job and had reacclimated to society. In addition, Homeboy Industries had offered mentoring and counseling services, and had also offered to help defendant find work. Defendant's mother, his lifelong friend and a reverend had each professed their willingness to provide emotional and financial support, including clothing, necessities and transportation. The court found that defendant's post-release plan was realistic and supported his suitability for resentencing.

f. *Expert Witness Evidence*

Richard Subia, a former warden of the California Department of Corrections and Rehabilitation (CDCR), testified and submitted a report on defendant's behalf.[4] Subia interviewed defendant, examined his criminal history, and reviewed his custodial records of discipline, offenses and rehabilitation. With respect to prison disciplinary processes, and classification systems, Subia explained that the designation as a "lifer" severely limits an inmate's ability to participate in programming for up to 10 years.

Defendant told Subia that he began using marijuana at the age of 13, and cocaine at age 15. Defendant was using and selling crack cocaine at age 21, and had become an addict by age 22. At age 15, defendant was "hanging out" with the Hoover Crips gang. He became a

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[4] Subia's expertise includes prison policies, procedure and culture, street and prison gangs (e.g., gang investigations and debriefing of gang drop-outs), and assessing inmates for release.

gang member by age 17. Sacramento prison officials had validated defendant's membership in the Hoover Criminal Disruptive Group, but defendant told Subia he had disassociated from his former gang. Subia reported that defendant was not "charged with any violations related to participation in gang activity." However, Subia testified that a 2007 RVR defendant received for battery on an inmate followed "a major riot . . . taking place involving Crips and Bloods." Subia accepted defendant's explanation that he was involved in numerous fights after being targeted for backing away from his gang, after mistakenly being identified as a sex offender, and for being caught up in race riots necessitating his participation.

Subia opined that, although some RVR's referred to conduct conducive to violence, fighting and mutual combat, close review showed that none of the incidents resulted in significant injuries. Subia explained that, after a fight, it is necessary to determine whether segregation is in order. If the combatants agree there will be no retaliation going forward, segregation is not necessary. In defendant's case, the only times an enemies list had been necessary was when defendant was the victim. As for defendant's criminal history, Subia believed his commitment offense was consistent with the prior crimes of robbery and theft to facilitate his drug use.

Subia testified that prison gangs differ from street gangs. Defendant had belonged to the Crips on the streets, but there was no indication he belonged to a gang in prison. When defendant first entered prison, he hung out with Crips. Later, defendant and a group

of other inmates turned their backs on the Crips, and informed prison staff they were not associated with the gang. Defendant was charged with battery after participating in a gang-related action in 2007. There was a major incident in the yard between the Crips and Bloods. Because defendant was African American and came into prison as a Crip, "house rules" required him to react in a certain way if an issue arose involving people from his neighborhood or race. If he failed to do so, other inmates might retaliate against him.

Most of defendant's fights involved his efforts to exit the Crips gang. He was assaulted several times by gang members, then charged with fighting. Subia did not believe that in context, the frequency of defendant's fights bore a significant relationship to whether he posed a current danger to public safety. In the outside community, one can walk away from a fight and not see that person again. In prison, walking away brands the inmate as a coward and causes him to be preyed upon.

Inmates may get work assignments after a committee assigns a classification score and custody level. Based on that score and custody level, the inmate is placed on a waiting list, or in a job assignment or educational program. Defendant's eligibility for work was limited by his level 4 close custody status and the fact that he was housed at New Folsom, where programming is more difficult to obtain. After defendant was moved to Lancaster in 2012, more programming opportunities were available to him. Shortly after being transferred there, defendant began programming and sent a letter to his supervisor in an effort to

obtain work. After Propositions 36 and 47 were passed, defendant participated in several self-help programs. Prior to passage of the Propositions, he had done some mail-order programs, and performed some (primarily janitorial) work. He learned manual labor and entry level type work in prison.

Defendant had a transitional plan. He had been accepted and was working with PREP, and had a position in its restorative justice program. Homeboy Industries also had offered him job training, substance abuse treatment and mental health assistance, if necessary. Based on his assessment and review of defendant's RVR's and criminal history, Subia opined that defendant posed no current unreasonable risk of danger.

DISCUSSION

Defendant maintains the trial court abused its discretion by arbitrarily rejecting the opinion of his expert witness that defendant did not pose an unreasonable risk of danger. He also contends there is insufficient evidence to support the trial court's conclusions that defendant failed to demonstrate he had disassociated from his gang, or that his rehabilitation was insufficient to support release. Finally, defendant argues that the court erred in relying on an unproven incident alleged in a probation report as evidence that he lacked insight regarding his past conduct. We disagree with these contentions.

1. *Proposition 36 and the Standard of Review*

Defendant's eligibility for resentencing is not at issue. An eligible defendant may still be unsuitable for resentencing if "the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (§ 1170.126, subd. (f); see § 1170.126, subd. (e); *Valencia, supra,* 3 Cal.5th at p. 354.) In determining whether a petitioner poses an "unreasonable risk of danger to public safety," the criteria a court may consider, include: "(1) [t]he petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; [¶] (2) [t]he petitioner's disciplinary record and record of rehabilitation while incarcerated; and [¶] (3) [a]ny other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety." (§ 1170.126, subd. (g).) Because section 1170.126 vests "'discretionary power . . . in the trial court, its exercise of that discretion "must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]"' [Citation.]" (*People v. Williams* (2013) 58 Cal.4th 197, 270–271; § 1170.126, subd. (g).)

2. *Rejection of Expert Opinion*

Defendant's principal contention of error focuses on the court's rejection of Subia's opinion that defendant did not pose an unreasonable

risk of danger to the public at the time of the suitability hearing. Defendant argues the court's rejection of the expert's opinion was arbitrary and is contradicted by the factual record.

Of course, the trial court is not required to accept the opinion of an expert witness. (*People v. McCoy* (1995) 40 Cal.App.4th 778, 785 ["trial court is not obligated to accept even unanimous or uncontradicted expert opinion"].) "[T]he value of an expert's testimony depends on the material upon which the opinion is based and the reasoning used to form that opinion." (*Ibid.*) "The trial court may reject completely the testimony of an expert witness, as long as its decision to do so is not arbitrary." (*Ibid.*) The fact finder determines the facts, not the expert, and the fact finder may "reject even 'a unanimity of expert opinion.'" (*In re Scott* (2003) 29 Cal.4th 783, 823 (*Scott*).) "'"To hold otherwise would be in effect to substitute a trial by 'experts' . . . ."'" (*Ibid.*)

This rule is especially important where, as here, the witness is not a "neutral court–appointed expert[] but [an] expert[] hired by a party specifically seeking evidence supporting that party's position." (*Scott*, *supra*, 29 Cal.4th at p. 823.)

Defendant insists the record supports Subia's opinion that it was primarily defendant's effort to disassociate from gang life that led to his fights. However, the court concluded that the record "d[id] not bear out [Subia's] assertions." Instead, the court found there was only a single instance in which corroborating evidence showed defendant was attacked first (in November 2014, when he was attacked in his cell by another inmate), a finding defendant does not dispute. Further, the

fact that Subia's conclusion–which relied almost entirely on defendant's self-serving account–was not directly contradicted did not compel the court to credit his opinion. (Cf., *People v. McNally* (2015) 236 Cal.App.4th 1419, 1433-1434 ["'The mere fact that defendant's testimony was not improbable and was uncontradicted by direct testimony, did not compel the jury to believe it, where the circumstances were such as to reasonably justify an inference of guilt," because "'few criminals would . . . be convicted if their explanations were always accepted as gospel truth'"].) As factfinder, the trial court had the responsibility to resolve factual disputes and make credibility determinations, and we defer to its determination. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

Defendant also takes issue with the court's rejection of his assertion (and Subia's reliance thereon), that some altercations involved "racial riot[s]" in which he was forced to become involved and to "defend [himself]" to avoid being targeted by members of his own race. First, the trial court rejected two RVR's on which defendant relies which explicitly include the word "riot." The 2005 RVR regarding defendant's participation in a "riot" was dismissed for insufficient evidence after it was determined he was attacked by other inmates. In a June 2007 RVR, although defendant characterized an incident as a "riot," the court concluded that "[n]othing in the RVR . . . mention[ed] any rioting activity" during defendant's fight with other inmates. With regard to the June 2007 incident on the basketball court, the court rejected Subia's opinion that defendant's participation in that fight was

mitigated by evidence the incident was a "major riot." To the contrary, the court found "[n]othing . . . to indicate that there was a 'major' [gang] riot . . . on the yard. Furthermore, [defendant] was not involved in the melee . . . he was in another part of the yard and then ran toward the melee . . . and attacked a rival gang member . . . sitting away from the incident," even though guards had ordered defendant to come to them.

Finally, the court rejected Subia's opinion that defendant had been targeted as a sexual offender because of the "R" suffix placed on his record in 2003. Subia testified that inmates have a "wide web" and are easily able to "run[ ] a check on somebody" to determine if an inmate has a history of sexually based offenses. Accordingly, the court found no temporal connection between defendant's fights–which increased in frequency in 2013–and placement of the "R" suffix 10 years earlier. Rather, the court found defendant's claim that he had been attacked after being labeled a sexual predator to be simply "another empty excuse for his aggressive behavior." This conclusion was reasonable, in light of Subia's testimony that such information was readily accessible to inmates.

Finally, defendant faults the trial court for rejecting Subia's testimony that the increase in fighting after 2013 was attributable to defendant's transfer from New Folsom. Again, the court was free to find this testimony not credible, particularly in light of evidence that in all six RVR's for fighting, defendant consistently ignored orders to stop, forcing guards to use pepper spray or other methods to stop the violence. There was nothing capricious or improper in the court's

rejection of Subia's expert opinion, and defendant fails to show an abuse of discretion.

3. *Substantial Evidence Supports the Court's Conclusion that Defendant Had Not Disassociated From His Gang*

According to Subia, defendant admitted to prison officials at New Folsom that he had belonged to the Crips or "West Side Hoover Criminal Gang." He purportedly made this admission to notify prison staff he was no longer associated with the gang and did not support its activities. But, defendant chose not to formally sever ties with the Crips and "debrief," because he would have had to reveal certain information. Had he done so, he would have been labeled a "rat," and he and his family would have been in danger. Instead, defendant chose to mind his own business, keep his head low and stand his ground until he was released.

The trial court agreed that defendant had not engaged in gang-related activity since 2007. But it rejected his contention that he had disassociated from his gang. "[B]ecause [defendant] chose not to debrief," he was "still formally considered a member of a violent criminal enterprise." His ongoing "status as a member of the Crips" militated against release. Defendant maintains that the absence of any gang-related rules violations since 2007, coupled with evidence that he was "set up" for possession of a weapon and also attacked in his cell, demonstrates his disassociation from the gang. While the record might support that conclusion, it also supports the court's findings. Absent a

miscarriage of justice–and there is none here–it is not our role to second-guess factual findings made by the trial court or to reweigh the evidence. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; *People v. Young* (2005) 34 Cal.4th 1149, 1181 [appellate court does not reweigh evidence or resolve evidentiary conflicts].) The trial court found defendant's decision not to formally debrief with prison officials to be persuasive evidence that he had chosen to maintain his gang affiliation. We cannot find that conclusion was an abuse of discretion, nor does it lack sufficient evidentiary support.

4. *Rehabilitation Efforts*

Defendant takes issue with the trial court's conclusion that his efforts at rehabilitation, while laudable, were not significantly supportive of his release because those efforts did "not reflect[] . . . genuine . . . rehabilitation" in light of the fact that they were not undertaken until after he filed the resentencing petition. Again, the record supports the court's conclusion.

It is undisputed that defendant received his high school equivalency certificate, and consistently participated in church activities while incarcerated in Sacramento from 2002 through 2012. However, it is also undisputed that defendant began engaging in self-help activities and programs in earnest only after filing his resentencing petition in December 2012. The details of those activities, set forth above, need not be repeated. What is pertinent is the court's conclusion that defendant's belated efforts at rehabilitation undermined

his "sincerity and motivation to meaningfully address his history of addiction." Pointing to defendant's "extensive history of recidivism and . . . crack cocaine addiction," the court observed that, if "his only motivation to address the issues that led to his criminal behavior [was] the opportunity for release, the Court ha[d] little confidence that [he] would participate in re-entry programs to reduce his chances of recidivism if he were released." It was reasonable for the court to focus on defendant's efforts at self-help programs, particularly those related to substance abuse, given his long-standing addiction. As trier of fact, the court reasonably concluded that "defendant's efforts [did] not reflect[] . . . genuine . . . rehabilitation" in light of the fact that they had not been undertaken in earnest until after he sought resentencing. (*People v. Gibson* (2016) 2 Cal.App.5th 315, 329.)

5. *Defendant's Lack of Insight Regarding and/or Minimization of His Involvement in Past Crimes*

Proposition 36 provides that an eligible petitioner "shall be resentenced . . . unless the court, in its discretion, determines that [his] resentencing . . . would pose an unreasonable risk of danger to public safety." (§ 1170.126, subd. (f).) Examples of evidence the court may consider in making this determination include the petitioner's history of criminal convictions, including the types of crimes committed and the extent of injury to victims, the remoteness of those crimes, and any other evidence the court deems relevant to the question whether a new sentence would pose an unreasonable risk of danger to public safety.

(§ 1170.126, subd. (g); *People v. Garcia* (2014) 230 Cal.App.4th 763, 769.)

Defendant argues the court improperly relied on double hearsay in a probation report that states he struck a man with a brick. Defendant failed to raise this objection at the suitability hearing. Accordingly, the assertion is forfeited. (See Evid. Code, § 353; see also *People v. Brimmer* (2014) 230 Cal.App.4th 782, 800 [finding forfeiture in Proposition 36 context for petitioner's failure to object that probation report was an improper source of evidence of factual circumstances of crime].)

Even if the argument had not been forfeited, defendant's assertion that the court relied solely or primarily on inadmissible hearsay in the probation report to conclude that he continues to pose an unreasonable risk to public safety is mistaken. As discussed above, the court exhaustively reviewed evidence of defendant's 13-year string of violent property crimes, beginning at age 14. The court noted defendant had suffered numerous parole violations and has been returned to custody at least four times for engaging in violent behavior similar to that for which he was previously incarcerated. The court found that "multiple incarcerations" had "clearly" been insufficient "to deter [defendant's] criminal behavior prior to his current commitment." The court was entitled to consider the violent nature of defendant's crimes in determining whether granting his resentencing petition would present an unreasonable risk of danger to public safety. (§ 1170.126, subd. (g)(1).)

Moreover, defendant is still minimizing (or outright denying) his involvement in prior crimes. At the hearing he claimed, among other things, that he had "accidentally" shot a pizza delivery boy whom he tried to rob, and that he was never identified as a perpetrator in the burglary leading to his current incarceration, despite evidence to the contrary. The court was free to consider defendant's tendency to minimize or deny his involvement in crimes of which he has been convicted. As the court stated, "minimizing or denying one's involvement in criminal activity reflects a lack of insight which . . . tends to show that an inmate remains dangerous. Evidence of lack of insight indicates current dangerousness when it shows 'a *material* deficiency in an inmate's understanding and acceptance of responsibility for the crime' that 'involves an aspect of the criminal conduct or its causes that are significant.' [(*Ryner, supra,* 196 Cal.App.4th at pp. 548–549.)] An inmate's minimization of his responsibility for his conduct . . . is probative of current dangerousness. [(*In re Shaputis* (2008) 44 Cal.4th 1241,] 1260, fn. 18; *In re Tapia* (2012) 207 Cal.App.4th 1104, 1112.)" An absence of insight may support a finding that an inmate presents an unreasonable risk of danger to society because "[c]urrent attitudes toward past criminal conduct are a significant predictor of [his] future behavior should parole be granted. (*In re Shaputis*[*, supra,*] 53 Cal.4th [at p.] 219; [*In re Lawrence* (2008) 44 Cal.4th 1181,] 1213.)"

Defendant's tendency to contradict the inherently violent nature of the crimes and minimize his own violent tendencies was reflected in

his claim that he never hit a victim with a brick, that he "accidentally" shot the pizza delivery man, and that he had not committed the burglary that led to his current commitment. Defendant's claims demonstrate a lack of insight and a "material deficiency" as to his assumption of responsibility for his crimes. (*Ryner, supra*, 196 Cal.App.4th at pp. 548-549.) Thus, the court reasonably concluded that, while remote, defendant's criminal history considered in conjunction with his misconduct in prison, CSRA score and continued gang membership, remained "predictive of current dangerousness in light of [his] flagrant denial and minimization of his past criminal activity."

The court's well-reasoned memorandum of decision reflects a proper application of the Proposition 36 criteria, and a careful evaluation of evidence presented–including defendant's criminal history, disciplinary record, record of rehabilitation, classification and risk scores, age, post–release plans, and expert witness testimony. After weighing this evidence, the court reasonably concluded that defendant currently poses an unreasonable risk of danger to public safety. The record supports that conclusion.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.