

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC LANGFORD DANIELS,

Defendant and Appellant.

B259284

(Los Angeles County
Super. Ct. No. NA034357)

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.

Eric Langford Daniels, aka Eric Andrews, appeals from an order denying his petition to recall his sentence under the Three Strikes Reform Act of 2012. (Pen. Code, § 1170.126.)¹ After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*). We directed appointed counsel to send the record and a copy of the brief to appellant and notified him of his right to respond within 30 days. We received no response from appellant.

On November 2, 1997, police conducted a traffic stop of a car in which appellant was a passenger. Appellant complied with the officers' request to exit the car but then ran from the scene. While appellant was running, a sheer black nylon sock containing a handgun fell from the waistband of his sweatpants. Appellant was apprehended and charged with unlawful possession of a firearm by a felon (former Penal Code § 12021, subd. (a)).²

At his jury trial, appellant testified that the gun did not belong to him. According to appellant, the driver dropped the gun into his lap as police approached the vehicle, and he put it in his waistband because he was afraid to discard it while the police were approaching. The jury found appellant guilty of unlawfully possessing the firearm. At a subsequent bench trial, the trial court found true allegations that appellant suffered three prior strike convictions (robbery, attempted robbery, and burglary). The trial court sentenced appellant to 25 years to life in prison, pursuant to the Three Strikes Law. We affirmed his conviction on direct appeal, modifying his sentence only to accurately reflect his precommitment credits and obligatory parole revocation fine.

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

² The Legislature repealed former Penal Code section 12021, subdivision (a)(1) effective January 1, 2011, and recodified the statute without substantive change as Penal Code section 29800, subdivision (a)(1), operative January 1, 2012. (See Stats. 2010, c. 711, §§ 6, 10; Pen. Code, § 29800, Law Revision Commission Comments.)

In 2012, following the passage of Proposition 36, appellant filed a petition for recall of his sentence pursuant to section 1170.126. The trial court denied his petition after concluding he was “armed” with a firearm during the commission of his final strike offense and therefore was ineligible for recall of his sentence. (See §§ 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii), 1170.126, subd. (e)(2).) The trial court relied on *People v. White* (2014) 223 Cal.App.4th 512 and *People v. Osuna* (2014) 225 Cal.App.4th 1020, both of which held that a felon who actually physically possessed a firearm was “armed” while committing the offense of unlawful possession of a firearm and was therefore ineligible for recall of sentence under section 1170.126. (See *People v. White, supra*, 223 Cal.App.4th at pp. 526-527; *People v. Osuna, supra*, 225 Cal.App.4th at p.1030.) Appellant timely appealed.³

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.

³ The trial court’s denial of a section 1170.126 motion for recall of sentence is an appealable order under section 1237, subdivision (b), whether or not the prisoner satisfies the threshold eligibility requirements to make such a motion. (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 598-601.)