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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIE NORTON,

Defendant and Appellant.

B272191

(Los Angeles County
Super. Ct. No. TA114930)

THE COURT:*

Willie Norton appeals from the denial of his request for resentencing pursuant to Proposition 36 (Pen. Code, § 1170.126).¹ We appointed counsel to represent him on this appeal.

Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and requested this court to independently review the record on appeal to determine whether any arguable issues exist. On August 24, 2016, we sent a notice to defendant, advising him he had 30 days

* BOREN, P.J. ASHMANN-GERST, J. CHAVEZ, J.

¹ All further statutory references are to the Penal Code.

in which to personally submit any contentions or issues which he wished us to consider. He has not done so.

In July 2011, a jury convicted defendant of one count of assault with a deadly weapon, a knife, in violation of section 245, subdivision (a)(1), and found true the allegation that defendant personally used a deadly or dangerous weapon, a knife, within the meaning of section 12022, subdivision (b)(1).² Defendant waived a jury trial on the prior conviction allegations, including the allegations that he had suffered two prior felony convictions within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)). At the court trial on the prior conviction allegations, defense counsel contended defendant's 2000 conviction in case No. BA197473 for violating section 245, subdivision (a)(1) was for assault by means of force likely to produce great bodily injury and so did not qualify as a strike conviction. Based on the documentary evidence produced by the prosecution, the court found that defendant pled guilty to assault with a deadly weapon, to wit, an automobile or van, in violation for section 245, subdivision (a)(1), which qualified as a strike conviction under the Three Strikes law.

In August 2013, defendant filed a petition for writ of habeas corpus with this Court, contending that his 2000 assault conviction did not qualify as a strike conviction. In September 2013, we denied the petition. (B250914.)

In March 2016, defendant filed his motion for recall of sentence pursuant to section 1170.126 in the trial court. In this motion, he asserted that he was eligible for resentencing because his 2000 conviction for violating section 245, subdivision (a)(1) was not a serious or violent felony within the

² We later ordered this allegation stricken because personal use of a weapon is an element of the crime of assault with a deadly weapon.

meaning of the Three Strikes law. He maintained the conviction was for assault by means of force likely to cause great bodily injury.

The trial court denied the motion on the ground that it “was not filed within the two-year deadline from the effective date of Proposition 36 (November 7, 2012), as required by section 1170.126(b) and good cause was not stated for the late filing.” The court noted that an additional ground for the denial was that defendant’s “current conviction is for assault with a deadly weapon, to wit, a knife (see February 10, 2011 minute order in . . . case number TA114930), which is a serious felony (Penal Code section 1192.7(c)(23)), which makes him ineligible for relief under Proposition 36 (Penal Code section 1170.126(e)(1).”

In April 2016, defendant filed a petition for writ of error *coram nobis* in the trial court. The trial court denied the petition, finding that it was essentially a motion for reconsideration of the motion for recall, but contained no new law, facts or circumstances that the court could reconsider. This appeal followed.³

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. (*Wende, supra*, 25 Cal.3d at p. 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-282; *People v. Kelly* (2006) 40 Cal.4th 106, 122-124.)

The judgment is affirmed.

³ In May 2016, defendant filed a motion to have his 2011 conviction reduced from a felony to a misdemeanor pursuant to Proposition 47. The trial court denied this motion and defendant appealed. That appeal is pending before us in case No. B276321. Appellate counsel in that case has filed a *Wende* brief.