Filed 11/1/18 P. v. Bell CA2/2

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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. BOBBY LOUIS BELL, Defendant and Appellant.	B288504 (Los Angeles County Super. Ct. No. KA046461)

THE COURT:

Bobby Louis Bell (defendant) appeals from an order denying his petition to be resentenced pursuant to the Three Strikes Reform Act of 2012, added by Proposition 36 (the Reform Act). (Pen. Code, § 1170.126.)[1] His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no

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

issues. On August 2, 2018, defendant was notified by his appointed counsel of his right to file a supplemental brief and to request the court to have present counsel relieved if he so desires. Over 30 days have elapsed, and defendant has submitted no brief or letter. We have reviewed the entire record, and finding no arguable issues, affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

In 2000, a jury convicted defendant of (1) being a felon in possession of a firearm, a felony (former § 12021, subd. (a)(1)), and (2) giving false information to a police officer, a misdemeanor (§ 148.9, subd. (a)). The charges arose after defendant ignored an officer's command to stop as defendant was walking down the street. Defendant had a nine-millimeter handgun in his pants pocket. At that time, defendant was not permitted to possess a handgun due to his prior convictions for (1) first degree robbery in 1987 in Oregon, and (2) robbery in 1996 in California. As defendant was being arrested, he gave a false name to police. The trial court ultimately sentenced defendant to prison for 29 years to life, which was comprised in part of a 25-year-to-life sentence for the felon-in-possession charge which was a "third strike" under our Three Strikes law. (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(j).) This court affirmed the judgment in a nonpublished opinion. (*People v. Bell* (Nov. 19, 2001, B141997).)

In 2012, defendant filed a "Petition for Recall of Sentence" pursuant to the Reform Act.

In 2018, the trial court denied the petition, reasoning that defendant was ineligible for relief under the Reform Act because he (1) was "armed with a firearm" during the current offense (§§ 667, subd. (e)(2)(C)(iii) & 1170.12, subd. (c)(2)(C)(iii)), and (2) had a prior juvenile adjudication for attempted murder, a

disqualifying offense (§§ 667, subd. (e)(2)(C)(iv)(IV) & 1170.12, subd. (c)(2)(C)(iv)(IV)).

Defendant filed a timely notice of appeal.

DISCUSSION

On November 6, 2012, voters approved the Reform Act, and it went into effect the next day. (Ballot Pamp., Gen. Elec. (Nov. 6, 2012) text of Prop. 36, p. 110.) The Reform Act amended the Three Strikes law so that an indeterminate sentence of 25 years to life in prison is applied only where the defendant's third strike conviction is a serious or violent felony, or where the prosecution pleads and proves other specific factors. (§§ 667, subd. (e)(2)(C) & 1170.12, subd. (c)(2)(C).) The Reform Act also added section 1170.126, which allows inmates sentenced under the previous version of the Three Strikes law to petition for a recall of their sentence if they would not have been sentenced to an indeterminate life sentence under the Reform Act. (§ 1170.126, subds. (a)-(b).) However, an inmate is ineligible for resentencing if he falls within any of the four exceptions provided by the Reform Act. (§§ 667, subd. (e)(2)(C), 1170.12, subd. (c)(2)(C) & 1170.126, subd. (e)(2).) Two such exceptions are pertinent to this appeal: Relief is not available if the defendant (1) "[d]uring the commission of the current offense . . . used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person" (§§ 667, subd. (e)(2)(C)(iii) & 1170.12, subd. (c)(2)(C)(iii)), or (2) has a prior conviction for "[a]ny homicide offense, including any attempted homicide offense" (§§ 667, subd. (e)(2)(C)(iv)(IV) & 1170.12, subd. (c)(2)(C)(iv)(IV)).

The trial court correctly denied defendant's petition in this case because he is ineligible for resentencing under the Reform Act under both exceptions cited above.

To begin, defendant was "armed with a firearm." That phrase "has been statutorily defined and judicially construed to mean having a firearm available for use, either offensively or defensively." (*People v. Osuna* (2014) 225 Cal.App.4th 1020, 1029 (*Osuna*); see also *People v. Brimmer* (2014) 230 Cal.App.4th 782, 795; *People v. Bland* (1995) 10 Cal.4th 991, 997.) Here, defendant had a gun in his pants pocket, so it was available for his use.

Although defendant made no arguments to this court, we briefly review and reject the arguments he presented to the trial court. First, he asserted that a defendant is "armed with a firearm" only if being so armed facilitates some other crime. Courts have repeatedly rejected this argument (*Osuna*, *supra*, 225 Cal.App.4th 1020; *People v. Elder* (2014) 227 Cal.App.4th 1308), and we see no basis for departing from this solid wall of precedent. Second, defendant contended that the People were required to "plead" and "prove" that he was "armed with a firearm," and that their failure to do so in 2000 means that he is not ineligible for relief now. This argument has also been repeatedly rejected by the courts. (*People v. Blakely* (2014) 225 Cal.App.4th 1042, 1058-1063; *People v. White* (2014) 223 Cal.App.4th 512, 526-527.) Again, we see no basis for departing from this precedent.

Further, defendant's juvenile adjudication for attempted homicide disqualifies him for relief. Although the Reform Act speaks in terms of "convictions," the Three Strikes law also reaches a juvenile adjudication if the juvenile was "sixteen years

of age or older," was "found to be a fit and proper subject to be dealt with under the juvenile court law," and was "adjudged a ward of the juvenile court" for a Welfare and Institutions Code section 707, subdivision (b) offense. (§ 1170.12, subd. (b)(3)(A)-(D).) At the time of the attempted murder offense, defendant was seventeen years old, adjudged a ward of the court, was found to be a fit and proper subject to be dealt with under the juvenile court law, and committed to the California Youth Authority in October 1981. Attempted murder was a Welfare and Institutions Code section 707, subdivision (b) offense at the time defendant committed his current commitment offense of being a felon in possession of a firearm.

For these reasons, the order denying the petition is affirmed.

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LUI, P. J., ASHMANN-GERST, J., HOFFSTADT, J.