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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL ANDRE GRINKER,

Defendant and Appellant.

B282535

(Los Angeles County
Super. Ct. No. LA021739)

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.

Defendant and appellant Paul Andre Grinker was convicted by jury in 1997 of possession of a firearm by a felon, in violation of former Penal Code section 12021, subdivision (a)(1).¹ The jury also found defendant had suffered 81 prior convictions under the three strikes law. Defendant was sentenced to 25 years to life. In 1998, this court ordered 38 of the prior convictions stricken, but otherwise affirmed the judgment.

Defendant filed a petition for recall of sentence on December 18, 2012. The petition alleged defendant was entitled to resentencing under the Three Strikes Reform Act and section 1170.126 because his commitment offense is a not a serious or violent felony. After the filing of further pleadings by the parties, the court denied the petition based on its finding, beyond a reasonable doubt, that defendant was armed with a firearm in the commission of the commitment offense and statutorily ineligible for relief under sections 1170.126, subdivision (e)(2), and 667, subdivision (e)(2)(C)(iii).

Defendant filed a timely notice of appeal. This court appointed counsel to represent defendant on appeal. On August 18, 2017, appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no arguments but requesting this court to independently review the record. Defendant was notified of his right to file a supplement brief.

Defendant filed a letter brief on September 8, 2017. He argues that the trial court's determination that he was

¹ Statutory references are to the Penal Code.

armed with a firearm violated his Sixth Amendment right to a jury trial with proof beyond a reasonable doubt, and deprived him of due process of law.

Defendant's contentions have been routinely rejected. The right to a jury trial with proof beyond a reasonable doubt does not apply to a determination of eligibility for resentencing under section 1170.126. (*People v. Bradford* (2014) 227 Cal.App.4th 1322, 1334–1336; *People v. Blakely* (2014) 225 Cal.App.4th 1042, 1059; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1039; *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1301, 1304–1305.) The reasoning of these authorities establishes there was no due process violation when the trial court determined defendant was armed in the commission of the commitment offense. Although not required by the weight of case authority, the trial court found beyond a reasonable doubt defendant was armed with a firearm and therefore ineligible for resentencing under sections 1170.126, subdivision (e)(2), and 667, subdivision (e)(2)(C)(iii).

We have conducted an independent examination of the record for arguable appellate contentions, and find none. (*Smith v. Robbins* (2000) 528 U.S. 259.) The judgment is affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

RAPHAEL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.