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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. WILLIAM BLACKWELL, Defendant and Appellant.	B267117 (Los Angeles County Super. Ct. No. BA099542)

THE COURT:[*]

Appellant William Blackwell appeals from the trial court's postjudgment order denying his "Petition for Recall of Sentence Pursuant to Three Strikes Reform Act of 2012."

In 1996, a jury convicted appellant of conspiracy to commit robbery (Pen. Code, § 182, subd. (a)(1)).[1] Because he had two or more prior "strike" convictions from 1978 for kidnapping (§ 207) and 1986 for robbery (§ 211), the court sentenced him to prison for 25 years to life. (§§ 667, 1170.12.)

Following the November 2012, passage of Proposition 36 (§ 1170.126), which allows persons convicted of nonserious felonies to file petitions for recall of their third

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[*] BOREN, P. J., ASHMANN-GERST, J., HOFFSTADT, J.

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

strike sentences and for resentencing to second strike sentences, appellant filed such a petition. Appellant argued that at the time he committed his current offense in 1994 and was sentenced in 1996, his current offense was not a "serious" or "violent" felony within section 1192.7, subdivision (c) or section 667.5, subdivision (c), and was not designated a "serious" felony until the enactment of Proposition 21 (§ 1192.7) on March 7, 2000. To deny his petition, he argued, would be a violation of the ex post facto laws.

The People filed an opposition, arguing that appellant was not entitled to resentencing because he was both ineligible and unsuitable. The People argued there was no ex post facto issue in classifying the nature of his current offense at the time Proposition 21 was enacted, rather than at the time the crime was committed, and also pointed out that he was ineligible because he had prior crimes involving sexual violence (§§ 1170.126, subd. (e)(3), 1170.12, subd. (c)(2)(C)(iv)(I) (e.g., he was convicted of kidnapping with the intent to commit rape, and of kidnapping another victim with the intent to commit oral copulation by force, violence, duress, menace or threat). The People also argued that he was unsuitable for resentencing because he posed an unreasonable risk of danger to the public safety (§ 1170.126, subd. (f)). The People set forth appellant's lengthy criminal record, and noted that he had committed several crimes while on probation, had committed rule violations in prison and had an adverse transfer to another prison facility based on his propensity for violence and a leadership position as a "shot caller" for the Harlem Crips gang.

Appellant filed a reply brief that did not address the unsuitability issue, but acknowledged that in *People v. Johnson* (2015) 61 Cal.4th 674, 687 (*Johnson*), our Supreme Court held that "for purposes of resentencing under section 1170.126, the classification of the current offense as serious or violent is based on the law as of [November 7, 2012, the effective date of Proposition 36]," and not the date of commission or conviction of the offense. Based on *Johnson*, the trial court denied the petition for recall, and this appeal followed.

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an "Opening Brief" in which no arguable issues were raised. On

November 17, 2015, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. Appellant submitted a response in which he essentially reargued the points made in his petition below and asserted that *Johnson* is wrong.

The trial court properly denied the petition based on *Johnson*. In addition, the record supports the finding that appellant was unsuitable for resentencing. We find no cognizable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order denying the petition for recall is affirmed.

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