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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY CORTEZ ROBINSON,

Defendant and Appellant.

B276570

(Los Angeles County
Super. Ct. No. YA038879)

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.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

In 1999, a jury convicted appellant Gregory Cortez Robinson of possession of a firearm by a felon (former Pen. Code, § 12021, subd. (a))¹, and also found true the allegations that he had suffered three prior “strike” convictions: two convictions for first degree burglary in 1986 and 1987, and one conviction for robbery in 1990. Pursuant to the “Three Strikes” law in effect at the time (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)), the trial court sentenced appellant to an indeterminate term of 25 years to life.

In November 2012, the electorate passed Proposition 36, the Three Strikes Reform Act of 2012. (§ 1170.126.) Pursuant to Proposition 36, appellant filed a petition to recall his sentence. The trial court found him ineligible for relief, since section 1170.126, subdivision (e)(2), prohibits recall of a third-strike sentence when a defendant was armed with a firearm during commission of his commitment offense. The trial court determined that this subdivision included within its scope appellant’s conviction for felon in possession of a firearm given the facts underlying his crime.

Appellant contends that the trial court erred when it found him ineligible for relief. Based on a long and consistent line of cases, we disagree. We therefore affirm the trial court.

FACTS

On November 14, 1998, police officers observed appellant driving a vehicle with significant traffic damage and no tire on the left rear rim. Appellant failed to stop for a stop sign, and continued through the intersection at 20 to 25 miles per hour. When the officers activated their overhead lights to initiate a

¹ All further undesignated section references are to the Penal Code unless otherwise noted.

traffic stop, appellant accelerated away at approximately 50 miles per hour. After a short pursuit, appellant drove his car into a curb, then jumped out and fled on foot. The officers chased appellant into the courtyard of a nearby apartment building and placed him under arrest. After arresting appellant, the officers searched his car. Inside the glove compartment, they found a box of live ammunition. Under the driver's seat, they found a loaded revolver.

DISCUSSION

Generally speaking, Proposition 36 prospectively limits third strike sentences to cases in which a defendant's commitment offense is itself a serious or violent felony within the meaning of the three strikes law. (§§ 1170.12, subd. (c)(2)(C); 667, subd. (e)(2)(C).) Further, Proposition 36 allows a recall of sentence and resentencing to a determinate term as a second strike offender for certain defendants who are presently serving a third strike indeterminate term for an offense that is not a serious or violent felony within the meaning of the Three Strikes law. (§ 1170.126, subd. (b); *People v. Yearwood* (2013) 213 Cal.App.4th 161, 167-168.) Section 1170.126, subdivision (e)(2), however, prohibits recall and resentencing if, during the commission of the current commitment offense, the defendant was armed with a firearm. (See *People v. Hicks* (2014) 231 Cal.App.4th 275, 282.)

Felon in possession of a firearm, former section 12021, subdivision (a), is not a serious or violent felony within the meaning of the three strikes law. (See generally, §§ 667.5, subd. (c); 1192.7, subd. (c).) Thus, whether appellant is eligible for resentencing under section 1170.126 depends upon whether his conviction for felon in possession of a firearm is properly

construed as an offense during the commission of which he was armed with a firearm. (See *People v. Hicks, supra*, 231 Cal.App.4th at p. 282.)

Appellant contends that although officers recovered the revolver from beneath the driver's seat of the vehicle he was driving immediately prior to his arrest, he was not "armed with a firearm" within the meaning of section 1170.126, subdivision (e)(2), because the arming did not facilitate a separate offense, but was in fact the offense. He asserts that the language of section 1170.126, subdivision (e)(2), requires that the arming be "tethered to" a separate offense that it "facilitates."

Unfortunately for appellant, multiple courts of appeal have addressed this issue and all have rejected appellant's position. These cases have held that so long as the facts underlying a felon in possession of a firearm conviction show that the defendant possessed the firearm in a manner that made it readily available for use, either offensively or defensively, then the defendant was armed with a firearm during commission of the offense within the meaning of section 1170.126, subdivision (e)(2), and ineligible for resentencing pursuant to Proposition 36. (See, e.g., *People v. White* (2014) 223 Cal.App.4th 512, 523-524, rev. denied April 30, 2014; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1029-1032, rev. denied July 9, 2014; *People v. Blakely* (2014) 225 Cal.App.4th 1042, 1054-1057, rev. denied July 9, 2014; *People v. Elder* (2014) 227 Cal.App.4th 1308, 1312-1313, rev. denied Oct. 15, 2014; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 798-799, rev. denied Jan. 14, 2015; *People v. Hicks, supra*, 231 Cal.App.4th at pp. 283-284, rev. denied Feb. 25, 2015.)

In the immediate case, appellant, a felon with multiple strike convictions, possessed the revolver in a manner which made it readily available to him for either offensive or defensive use. Under the cases cited above, he is not eligible for resentencing pursuant to Proposition 36. The trial court did not err.

DISPOSITION

The trial court order is affirmed.

SORTINO, J.*

We concur:

FLIER, Acting P.J.

GRIMES, J.

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