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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.

ALLEN FOSTER, JR.,

Defendant and Appellant.

B257236

(Los Angeles County Super. Ct.
No. TA036489)

APPEAL from a judgment of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner, Executive Director, and Richard B. Lennon, Staff Attorney, under appointments by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Allen Foster, Jr., was convicted by jury of attempted robbery, in violation of Penal Code sections 664/211.¹ Defendant was sentenced to 25 years-to-life pursuant to the three strikes law (§§ 1170.12, subds. (b)-(i) and 667, subds. (a)-(d)) because he had previously been convicted of robberies (§ 211) and kidnapping (§ 207).

Defendant filed a petition for recall of sentence pursuant to section 1170.126, enacted in 2012 by the passage of Proposition 36. Defendant requested to be resentenced as a second strike offender under the terms of the statute. The trial court denied the petition because defendant's current serious felony conviction renders him ineligible for relief under section 1170.126, subdivision (e)(2).

Defendant filed a timely notice of appeal. This court appointed counsel for defendant. Appointed counsel filed a brief raising no issues, but requested this court to independently review the record for arguable contentions pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised by letter from this court of his right to file a supplemental brief within 30 days. No supplemental brief has been filed by defendant.

Our independent review of the record indicates that the trial court properly denied the petition to recall the sentence. Attempted robbery is a serious felony. (§ 1192.7, subd. (c)(39).) The ameliorative provisions of Proposition 36 do not apply to a defendant currently sentenced to state prison for a serious felony. Defendant is statutorily ineligible for resentencing. (§ 1170.126, subd. (e)(2).)

¹ All statutory references are to the Penal Code.

We have conducted an independent review of the record on appeal. There are no arguable appellate contentions in this case. The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259.)

KRIEGLER, J.

We concur:

TURNER, P.J.

MOSK, J.