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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.

WILLIE FRED STEPHENS,  
SR.,

Defendant and Appellant.

B283090

(Los Angeles County  
Super. Ct. No. NA042596)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Reversed and remanded.

California Appellate Project, Jonathan B. Steiner and Richard B. Lennon, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Noah P. Hill and Theresa A. Patterson, Deputies Attorney General, for Plaintiff and Respondent.

In 2000, a jury convicted defendant and appellant Willie Fred Stephens, Sr., of possession of a firearm by a felon (count 1; former Pen. Code, § 12021)<sup>1</sup> and possession of a controlled substance (count 2; Health & Saf. Code, § 11350, subd. (a)). The jury also found defendant had two prior strike convictions. Defendant received a 25 years-to-life term for the felon in possession of a firearm conviction and a concurrent 25 years to life for the drug conviction.<sup>2</sup>

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

<sup>2</sup> This court affirmed defendant's conviction in an unpublished opinion. (*People v. Stephens* (July 25, 2005, B174562.) We described the facts surrounding the offenses as follows: "At about 8:00 p.m. on June 23, 1999, Long Beach Police Officer James Richardson responded to a radio call concerning a landlord-tenant dispute at an apartment complex in the 5900 block of Orange Avenue. At the complex, Officer Richardson saw appellant on an upstairs walkway leaning on a railing. The apartment manager was downstairs, yelling at appellant. Within a few minutes of Officer Richardson's arrival, Officer Donald Radcliffe arrived. [¶] Officer Richardson asked appellant to come downstairs. Appellant did. Officer Richardson asked appellant if he had any guns or drugs on his person, and appellant replied that he did not. Appellant agreed that Officer Richardson could conduct a pat-down search for officer safety. During the search, Officer Richardson felt a hard object that could have been a small pistol, reached into appellant's pocket and discovered a cellular telephone and a couple of hand-rolled cigarettes. [¶] Officer Richardson believed that the cigarettes contained marijuana, opened one of them, discovered that it contained marijuana and a substance which appeared to be rock cocaine, and arrested appellant. Appellant stated that someone needed to lock up his apartment. When Officer Radcliffe went to

Following the passage of Proposition 36 and enactment of section 1170.126, defendant sought a hearing to recall his sentence on the conviction for possession of a firearm.<sup>3</sup> The superior court held a hearing, but agreed with the prosecution that defendant was ineligible for recall and resentencing. In so ruling, the superior court found the prosecution proved by a preponderance of the evidence that the firearm “was readily available” to defendant, rendering him ineligible for resentencing.

Subsequently, the Supreme Court has held the “beyond a reasonable doubt” standard applies to determine resentencing eligibility. (*People v. Frierson* (2017) 4 Cal.5th 225, 239-240.) The Attorney General agrees with defendant that remand is appropriate for a new eligibility hearing under the appropriate legal standard. Accordingly, we reverse the order finding defendant ineligible for a recall and resentencing on count 1 and remand for a new hearing.

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the apartment door to lock it, he saw a .25 caliber pistol on a table near the door. The pistol had a round in the chamber and five rounds in the magazine.”

We also have denied a number of habeas corpus petitions.

<sup>3</sup> On June 1, 2017, defendant’s drug possession conviction was reduced to a misdemeanor under Proposition 47 (§ 1170.18, subd. (b)).

### **DISPOSITION**

The order is reversed and the matter is remanded for a new eligibility hearing.

DUNNING, J.\*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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