

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GERALD STANLEY McMILLAN,

Defendant and Appellant.

B281325

(Los Angeles County
Super. Ct. No. A369291)

APPEAL from an order of the Superior Court of Los Angeles County, Mildred Escobedo, Judge. Affirmed.

William J. Capriola, under appointment by the Court of Appeal, and Gerald Stanley McMillan, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Gerald McMillan appeals from the order denying his request for sentence modification and release under Proposition 57, the Public Safety and Rehabilitation Act of 2016. (See Cal. Const., art. I, § 32.) His appointed counsel filed a no-issue brief under *People v. Wende* (1979) 25 Cal.3d 436. McMillan filed a supplemental brief.

McMillan was convicted of second-degree murder in 1982. He was sentenced to 15 years to life in prison, plus a two-year enhancement for use of weapon under former Penal Code section 12022.5, and another two years for two prior convictions. In 2016, he filed a motion to “modify sentence and release” under Proposition 57, claiming his conviction was for a non-violent felony and he had served his base term. The court denied the motion on the ground that Proposition 57 provides an inmate who has completed his base term with a parole hearing.

Proposition 57 changed parole eligibility rules by adding section 32 to article I of the California Constitution, which provides: “Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.” (Cal. Const., art. I, § 32, subd. (a)(1).) By its plain terms, Proposition 57 created a mechanism for “parole consideration,” which does not entitle McMillan to seek relief in court in the first instance. Moreover, murder is a violent felony and hence not within the scope of the proposition. (Pen. Code, § 667.5, subd. (c)(1).) McMillan’s complaint that he has been denied parole “for 10 years” is not a proper subject of this appeal as the denial of parole is reviewed through a petition for writ of habeas corpus. (See *In re Roberts* (2005) 36 Cal.4th 575, 584.)

We have independently reviewed the record on appeal, and find that appointed counsel has fulfilled his duty, and that no arguable issue exists. (*Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.