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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.

DARNELL GODFREY,

Defendant and Appellant.

B297392

(Los Angeles County
Super. Ct. No. YA026763)

THE COURT:

In 1995, defendant and appellant Darnell Godfrey was apprehended after committing various traffic violations. A stolen handgun was recovered from his jacket pocket, and marijuana was found in his van. (*People v. Godfrey* (Sept. 26, 2017, B277245) [nonpub. opn.], at p. 2 (*Godfrey I.*))

The following year, a jury convicted defendant of possession of a firearm by a felon (Pen. Code, former § 12021, subd. (a)(1);

count 1),¹ receiving stolen property (§ 496, subd. (a); count 2), and possession of marijuana (Health & Saf. Code, § 11357, subd. (b); count 3). In a bifurcated proceeding, the trial court found true the allegations that defendant had three prior “strike” convictions within the meaning of the “Three Strikes” law (§§ 667, subds. (b)–(i), 1170.12, subd. (a)–(d)), and that he had suffered three prior prison terms for purposes of enhancements pursuant to section 667.5, subdivision (b). Defendant was sentenced to an indeterminate term of 25 years to life in state prison on count 1 and to two years, to be served concurrently, on count 2. The court stayed the three one-year section 667.5, subdivision (b) enhancements. Defendant received a fine for count 3. (*Godfrey I, supra*, B277245, at pp. 2–3.)

In 2012, defendant petitioned to recall his sentence pursuant to section 1170.126, which was enacted as part of Proposition 36. The trial court denied the petition, finding by a preponderance of the evidence that defendant was armed during the commission of the current offense and was therefore ineligible for recall and resentencing. (*Godfrey I, supra*, B277245, at p. 3.) We affirmed. (*Id.* at pp. 5–6.)

Our Supreme Court subsequently held that the People bear the burden of establishing beyond a reasonable doubt that a petitioner is ineligible for resentencing under Proposition 36. (*People v. Frierson* (2017) 4 Cal.5th 225, 230 (*Frierson*).)

In August 2018, defendant filed a “renewed” Proposition 36 petition in light of *Frierson*. The trial court deemed the new petition to be a motion for reconsideration, which it granted, and conducted a new eligibility hearing. The court denied the

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

petition with prejudice pursuant to section 1170.126, subdivision (e)(2), and section 667, subdivision (e)(2)(C)(iii), finding “beyond a reasonable doubt” that defendant was statutorily ineligible for recall and resentencing “because during the commission of the current offense he was armed with a firearm.” Defendant timely appealed.

Counsel was appointed to represent defendant in connection with this appeal. After reviewing the record, counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), in which no arguable issues were raised. On July 15, 2019, we advised defendant that he had 30 days within which to personally submit any contentions or issues for us to consider. We received no response.

We have examined the entire record on appeal and are satisfied that defendant’s appellate counsel has fully complied with his responsibilities and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

Defendant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the order entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123–124.)

The trial court’s order is affirmed.

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LUI, P. J.

ASHMANN-GERST, J.

HOFFSTADT, J.