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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.

RICKY KAMERICA FONTENOT,

Defendant and Appellant.

B296024

(Los Angeles County  
Super. Ct. No. YA021199)

**THE COURT:**

Defendant and appellant Ricky Kamerica Fontenot (defendant) appeals from the order denying his second petition for both recall of his third-strike sentence, and for resentencing under the provisions of Penal Code section 1179.126<sup>1</sup> (Proposition 36). His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. After we notified defendant of his counsel's brief, defendant submitted his

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

own supplemental brief. We have reviewed defendant's supplemental brief, as well as the entire record on appeal, and finding no arguable issues, affirm the order.

In 1995, defendant was convicted of possession of a firearm by a felon, in violation of former section 12021, subdivision (a)(1).<sup>2</sup> The court also found true the allegations that defendant had suffered two prior serious or violent felonies, pursuant to section 667.5, subdivision (b), and as strikes under the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The trial court sentenced defendant to a term of 25 years to life in prison, plus two years due to the prior prison terms. We affirmed the judgment in *People v. Fontenot*, *supra*, B095765.

In 2013, after the passage of Proposition 36, defendant filed his first petition for recall of sentence. The trial court denied the petition, finding defendant statutorily ineligible for resentencing under the provisions of sections 1170.126, subdivision (e)(2), and 667, subdivision (e)(2)(C)(iii), since he was armed with a firearm during the commission of the offense. We affirmed the trial court's order in *People v. Fontenot*, *supra*, B267335.

After the publication of *People v. Frierson* (2017) 4 Cal.5th 225, in which the California Supreme Court held that the reasonable doubt standard, rather than the preponderance of evidence standard, applied to the prosecution's burden to

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<sup>2</sup> Our summary of the case is taken from the allegations of defendant's second petition for recall of sentence, filed September 11, 2018, as well as exhibits attached to the petition, which include our opinions in prior appeals relating to this case. (See *People v. Fontenot* (Oct. 1, 1996, B095765) [nonpub. opn.]; *People v. Fontenot* (Aug. 17, 2016, B267335) [nonpub. opn.].)

establish ineligibility for resentencing under Proposition 36, defendant filed a petition for writ of habeas corpus. Counsel was appointed to represent defendant in his second petition to recall sentence, which was filed in September 2018.

The trial court considered the second petition and exhibits, which included the reporter's transcript of the testimony and proceedings leading to defendant's 1995 conviction (exhibit N), and argument of counsel. On February 13, 2019, the trial court found beyond a reasonable doubt that defendant was armed with firearms during the commission of his crime of felon in possession of a firearm, making him ineligible for resentencing. The petition was denied. Defendant filed a timely notice of appeal from that order.

In his supplemental brief, defendant argues that his 1995 conviction was not supported by substantial evidence, and that the arresting officer made inconsistent statements at trial and in pretrial proceedings. Defendant also argues that during deliberations in the 1995 trial, some jurors were undecided whether defendant's possession of a firearm was constructive or actual. In addition, defendant contends that the 1995 trial court erred in determining that his prior assault conviction qualified as a strike under the Three Strikes law. Those issues are not subject to relitigation here. (Cf. *People v. Cabrera* (2018) 21 Cal.App.5th 470.)

We have examined the entire record and are satisfied that defendant's appellate counsel has fully complied with his responsibilities and that no arguable issue exists. We conclude that 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 judgment 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 order denying defendant's Proposition 36 petition is affirmed.

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LUI, P.J.

CHAVEZ, J.

HOFFSTADT, J.