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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL ERIC ALLEN, Defendant and Appellant.	B344122 (Los Angeles County Super. Ct. No. BA016472)

APPEAL from an order of the Superior Court of Los Angeles County, Charlaine F. Olmedo, Judge. Affirmed.

Linda Lydia Gordon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1992, a jury convicted defendant Michael Eric Allen of first degree murder in violation of Penal Code[1] section 187, subdivision (a), attempted murder in violation of sections 664 and 187, subdivision (a), and second degree robbery in violation of section 211. (*People v. Allen* (Jan. 30, 2023, B315902) [nonpub. opn.] [2023 WL 1097455, at p. *1] (*Allen*).)[2] The jury found true for all counts the firearm enhancement set forth in section 12022.5. (See *Allen*, at p. *1.)

The trial court imposed the following prison sentences on Allen: five years on the robbery count and a four-year term on the firearm enhancement added to the sentence for that count; a consecutive term of life without the possibility of parole on the murder count; and a term of life with the possibility of parole on the attempted murder count, to be served concurrently with the sentences on the murder and robbery counts. (See *Allen*, *supra*, B315902 [2023 WL 1097455, at p. *1 & fn. 2].) The trial court stayed the sentence on the firearm enhancements for the murder and attempted murder counts. (*Allen*, at p. *1.)

In November 2024, Allen filed a petition for recall and resentencing pursuant to section 1170, subdivision (d)(1)(A). On January 22, 2025, the trial court denied the petition, reasoning that Allen is not eligible for relief under subparagraph (d)(1)(A) of section 1170 because he was 23 years old when he committed his crimes. On February 18, 2025, Allen timely appealed from the order denying his petition.

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[1] Undesignated statutory references are to the Penal Code.

[2] We, sua sponte, take judicial notice of our opinion from case No. B315902, which we issued on January 30, 2023. (Evid. Code, §§ 452, subd. (d), 459.)

On September 30, 2025, this court appointed counsel for Allen. On December 1, 2025, Allen's appointed counsel filed a brief in which counsel identified no issues for our review. Accompanying this brief was a declaration from counsel indicating that the attorney had sent a copy of her brief and the appellate record to Allen, and that she had informed Allen of "his right to file a supplemental brief . . . ." On December 4, 2025, the court clerk mailed to Allen a notice stating that he could submit a supplemental brief within 30 days. Allen filed a supplemental brief on December 11, 2025.[3]

Generally, when, as here, a defendant appeals from the denial of postconviction relief and appointed appellate counsel files a brief raising no issues, we do not review the record independently to determine whether there are any arguable issues on appeal. (See *People v. Delgadillo* (2022) 14 Cal.5th 216, 224–226 (*Delgadillo*).)[4] Rather, we "evaluate the specific arguments presented in" the defendant's supplemental brief. (See *Delgadillo*, at p. 232.)

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[3] On December 15, 2025, the court clerk's notice was returned as undeliverable mail with the notation "Out to Court" written on the envelope. In light of (1) appellate counsel's attestation that she provided Allen with her *Delgadillo* brief and the appellate record and (2) Allen's timely filing of his supplemental brief, Allen's failure to receive the clerk's notice did not prejudice him.

[4] Allen's appellate counsel asks us to exercise our discretion to conduct an independent review of the record. We decline to do so. (See *Delgadillo*, *supra*, 14 Cal.5th at p. 232 [holding that the decision to conduct an independent review of the record is a matter "wholly within the [Court of Appeal's] discretion"].)

Section 1170, subdivision (d)(1)(A) provides: "When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing."

In his supplemental brief, Allen does not contest the trial court's finding that he was 23 years old when he committed the crimes in question. Instead, Allen argues the exclusion of 18 to 25 year olds from resentencing relief under section 1170, subdivision (d)(1)(A) violates his right to equal protection under the federal and state Constitutions. He maintains, "It has . . . become indefensible to exclude . . . 18 to 25 year olds from the benefit" of resentencing relief under the statute because "youth[s] age[d] 18 to 25 share the ph[y]siological and p[s]ychological tr[a]its" of individuals under 18 years of age.

Our colleagues in Division Four of the First District rejected a habeas petitioner's claim that section 1170, subdivision (d)(1)(A) "violates . . . equal protection of the law because it does not apply to youthful offenders . . . who were between the ages of 18 and 25 when they committed their crimes." (See *In re Jones* (2019) 42 Cal.App.5th 477, 480–482 (*Jones*).)[5] The *Jones* court reasoned, "The Legislature could

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[5] *Jones* concerned an equal protection challenge to section 1170, former subdivision (d)(2)(A)(i). (See *Jones*, *supra*, 42 Cal.App.5th at p. 480.) The Legislature later renumbered that provision as subdivision (d)(1)(A) without substantive change. (See *People v. Baldwin* (2025) 113 Cal.App.5th 978, 988–989 & fn. 5; see also *Jones*, at p. 480 [noting that former subd. (d)(2)(A)(i) provided that "a defendant who [was] serving [a sentence of life without the possibility of parole] . . . for an offense

reasonably decide that for those convicted of [life without parole] crimes, the line should be drawn at age 18, rather than at some later date when the brain is fully developed. . . . While a different line could have been drawn, it is not entirely arbitrary to limit [resentencing relief under the statute] to individuals who committed their crimes before they were 18 years old." (See *Jones*, at p. 483.) As set forth below, Allen cites no binding authority questioning the reasoning in *Jones*.

Although Allen's supplemental brief is not altogether clear, Allen appears to offer the following authorities in support of his equal protection claim: (1) *People v. Briscoe* (2024) 105 Cal.App.5th 479, 495–496; and (2) page 867 of *People v. Hardin* (2024) 15 Cal.5th 834, which is an excerpt from Justice Liu's dissenting opinion in that case. Although we acknowledge that dissenting opinions are instructive and often shape the future development of the law, Justice Liu's dissenting opinion does not overrule *Jones* or bind us. (See *Doe v. Google, Inc.* (2020) 54 Cal.App.5th 948, 967, fn. 4 ["no dissenting opinion has the power to overrule precedent"].)

Allen also cites the lower court opinion that our high court reversed in *Hardin*. (See *Hardin*, *supra*, 15 Cal.5th at pp. 838–839, 866 (maj. opn.) [reversing the Court of Appeal's decision].) A decision that is "inconsistent with the decision of the Supreme Court or is disapproved by that court" typically has no "precedential effect . . . ." (See Cal. Rules of Court, rule 8.1115(e)(2).) Allen does not purport to rely on a portion of

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committed when the defendant was 'under 18 years of age' and who ha[d] been incarcerated for at least 15 years 'may submit to the sentencing court a petition for recall and resentencing' "].)

the Court of Appeal's opinion (if any) that survives the high court's opinion reversing that decision.

Briscoe is of no assistance to Allen either. *Briscoe* did not address the constitutionality of section 1170, subdivision (d)(1)(A)'s age limitation. Instead, *Briscoe* held that section 3051 "violates equal protection by excluding youth offenders[, that is, 18 to 25 year olds,] sentenced for special circumstance murder under section 190.2, subdivision (d) — which applies to nonkiller participants in specified felony offenses during which a murder occurred — while including those convicted of nonspecial circumstance first degree felony murder for the same specified felony offenses per the exact same standard under section 189, subdivision (e)(3)." (See *Briscoe*, *supra*, 105 Cal.App.5th at pp. 484–485, 488.) In doing so, *Briscoe* recognized that our high court in *Hardin* rejected an equal protection challenge to section 3051's exclusion of "youth life-without-parole offenders," but also left open the possibility defendants could raise " 'other as-applied challenges' to the statute 'based on particular special circumstances or the factual circumstances of individual cases.' [Citation.]" (See *Briscoe*, at p. 484, citing *Hardin*, 15 Cal.5th at pp. 839, 864.) To avoid running afoul of *Hardin*, *Briscoe* expressly limited its own holding to "the narrow factual context" before it. (See *Briscoe*, at p. 485; see also *id.* at p. 487 [noting that "*Hardin* forecloses [the defendant's] challenge to section 3051's exclusion of youth special circumstance murderers generally"].)

Accordingly, the trial court did not err in denying Allen's petition for recall and resentencing.

DISPOSITION

We affirm the trial court's January 22, 2025 order denying defendant Michael Eric Allen's petition for recall and resentencing under Penal Code section 1170, subdivision (d)(1)(A).

NOT TO BE PUBLISHED.

BENDIX. J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.