

Filed 8/17/18 P. v. Duncan CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHESTER ALAN DUNCAN,

Defendant and Appellant.

B286711

Los Angeles County
Super. Ct. No. GA026890

APPEAL from an order of the Superior Court of Los Angeles County, Terry Smerling, Judge. Affirmed.

Katharine Eileen Greenebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1997, a jury convicted Chester Alan Duncan of arson of an inhabited structure. (Pen. Code, § 451, subd. (b).) He was sentenced under the “Three Strikes” law to a prison term of 25 years to life, plus 10 years for two prior violent felonies, for a total of 35 years to life. (Pen. Code, § 1170.12, subs. (a)-(d).)

On October 30, 2017, Duncan petitioned the superior court for resentencing pursuant to Proposition 47, the Safe Neighborhoods and Schools Act, which reclassified as misdemeanors certain low-level drug and theft offenses that previously had been felonies or “wobblers,” and allows a defendant who had been convicted of one of those offenses to petition for resentencing as a misdemeanant. (Pen. Code, § 1170.18, subd. (f).) The trial court denied Duncan’s application because he failed to meet the requirements of Proposition 47. He appealed.

We appointed counsel to represent Duncan on appeal, and after examining the record counsel filed a brief raising no issues and asking this court to independently review the record. We then sent letters to Duncan and to appointed counsel, directing counsel to immediately forward the appellate record and brief to Duncan and advise him that he had 30 days to personally submit any contentions or issues he wished us to consider. He has not responded.

Resentencing under Proposition 47 is available only for a felony or wobbler that the proposition reclassified as a misdemeanor. Arson has not been reclassified as a misdemeanor, but remains a felony. (Pen. Code, § 451, subd. (d).) Therefore resentencing is unavailable to Duncan for this offense, and his petition was properly denied.

We have otherwise examined the entire record and conclude that Duncan's counsel complied with the responsibilities set forth in *People v. Kelly* (2006) 40 Cal.4th 106 and *People v. Wende* (1979) 25 Cal.3d 436, 441. No arguable issues exist.

DISPOSITION

The order denying Duncan's Proposition 47 petition is affirmed.

CHANEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.*

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