

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG ANTHONY RICHEY,

Defendant and Appellant.

B247653

(Los Angeles County Super. Ct.
No. A593464)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Brandlin, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Craig Anthony Richey appeals from the order of February 13, 2013, denying his motion under the provisions of Penal Code section 1203.4¹ to set aside his 1993 conviction. We affirm the order.

According to the superior court file in case No. A593464, defendant plead guilty on April 23, 1993, to first degree robbery (§ 211) with personal use of a firearm (§ 12022.5, subd. (a)). Defendant was sentenced to the high term of six years for the robbery with a two-year enhancement for the firearm use allegation. Additional counts of burglary (§ 459) and assault with a deadly weapon (§ 245, subd. (a)) were dismissed.

On February 11, 2013, defendant filed a petition for postjudgment relief pursuant to section 1203.4. Although it is difficult to discern the issue defendant raised in the section 1203.4 motion, it appears he is motivated to seek relief because his 1993 California conviction is being used to enhance defendant's latest felony conviction in another jurisdiction. The trial court denied the motion on February 13, 2013, ruling that defendant had not made a showing of entitlement to relief under section 1203.4.

This court appointed counsel to represent defendant on appeal from the order. On June 3, 2013, appointed counsel filed a brief raising no issues, asking this court to independently review the record for arguable appellate contentions under *People v. Wende* (1979) 25 Cal.3d 436. Defendant was advised of his right to file a supplemental brief within 30 days. Defendant filed a supplemental motion on appeal on July 8, 2013, and a supplemental brief on July 30, 2013.

Neither of defendant's supplemental filings discuss the only issue presented by the appeal, which is whether the trial court properly denied relief under section 1203.4. Section 1203.4, subdivision (a)(1), is a remedial provision which allows a limited class of probationers to set aside their pleas of guilty or no contest, or their conviction by jury, provided various requirements are satisfied, including successful completion of probation. The statute applies only to probationers, not defendants who are committed to state prison. (*People v. Borja* (1980) 110 Cal.App.3d 378, 382.) "Stated another way,

¹ All statutory references are to the Penal Code.

section 1203.4 applies to probationers, not parolees or former prisoners. ([*Ibid.*]; *People v. Mendez* (1991) 234 Cal.App.3d 1773, 1780; *People v. Jones* (1985) 176 Cal.App.3d 120, 130–131.)” (*People v. Parker* (2013) 217 Cal.App.4th 498, 502.)

It is undisputed that defendant was not placed on probation in 1993, but he instead was committed to state prison for eight years. He is not within the class of offenders eligible for relief under section 1203.4, and his request was therefore denied.

We have completed our independent review of the entirety of the appellate record. Our review reveals no arguable contentions on appeal. The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259.)

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.