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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. CHRISTOPHER D. TURNER, Defendant and Appellant.	B292557 (Los Angeles County Super. Ct. No. YA090746)

THE COURT*

Christopher D. Turner (defendant) appeals from the trial court's order revoking his probation and denying, in part, his motion to modify his previously imposed, but stayed, sentence. We appointed counsel to represent defendant on appeal.

Counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), and requested this court to independently review the record on appeal to determine whether any arguable issues exist. We notified defendant on July 19, 2019, that he had 30 days within which to submit by brief or

letter any grounds of appeal, contentions, or arguments he wished this court to consider. We have received no response. We find no error in the trial court's order, and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2014, defendant pled no contest to one count of possession for sale of a controlled substance. (Health & Saf. Code, § 11378).[1] He admitted to having suffered one prior drug-related conviction and admitted to having suffered three prison priors in 2007, 2011 and 2012. The trial court sentenced defendant to a nine-year sentence, consisting of (1) the upper term of three years on the substantive offense (§ 11378; Pen. Code, § 1170, subd. (h)); (2) a consecutive three-year enhancement term for his prior drug-related conviction (former § 11370.2, subd. (a), Stats. 1998, ch. 936, § 1, p. 6846, eff. Sept. 28, 1998 and amended by Stats. 2017, ch. 677 (S.B. 180), § 1, eff. Jan. 1, 2018); and (3) three consecutive one-year terms for each of defendant's three prison priors (Pen. Code, § 667.5, subd. (b)). The court then suspended the execution of that sentence, and placed defendant on five years of probation. Defendant did not appeal.

In April 2017, after the People filed a new case against defendant for grand theft, the trial court revoked defendant's probation. In August 2018, defendant moved for resentencing of the previously imposed, but stayed, nine-year sentence on two grounds: (1) pursuant to Senate Bill 180, effective January 1, 2018, the prior drug-related conviction to which he admitted no longer constituted a qualifying conviction for purposes of the three-year enhancement (Stats. 2017, ch. 677, § 1; *People v.*

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1 All further statutory references are to the Health and Safety Code unless otherwise indicated.

Millan (2018) 20 Cal.App.5th 450, 454-455 (*Millan*)); and (2) pursuant to the Safe Neighborhoods and Schools Act (the Act), enacted by the voters as Proposition 47 in the November 2014 election, the 2011 prison prior to which he admitted must be re-designated from a felony to a misdemeanor and therefore could not count toward an enhancement (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089, 1091). Accordingly, defendant argued that the trial court could impose only a five-year sentence following revocation of his probation (that is, nine years less the three-year enhancement pursuant to Senate Bill 180 and less one of the one-year enhancements pursuant to the Act).

The trial court re-designated defendant's 2011 prison prior as a misdemeanor (see Pen. Code, § 1170.18, subds. (f)-(h)) and, as a result, granted the motion as to the second ground; the court denied the motion as to the first ground. The trial court then executed the previously imposed but now modified sentence of eight years after defendant admitted to violating his probation.

Defendant timely appealed.

DISCUSSION

We conclude there is no infirmity in the proceedings resulting in defendant's sentence.

Senate Bill 180 eliminated the three-year prior drug conviction enhancement that comprised a portion of defendant's previously imposed sentence (Sen. Bill No. 180 (2017-2018 Reg. Sess.) Stats. 2017, ch. 677, § 1, eff. Jan. 1, 2018) and is retroactively applicable to non-final sentences (*In re Estrada* (1965) 63 Cal.2d 740, 742-748; *Millan*, *supra*, 20 Cal.App.5th 450, 455-456; *People v. McKenzie* (2018) 25 Cal.App.5th 1207, 1213 (*McKenzie*)). However, defendant's conviction became final on February 16, 2015 (the date his sentence was imposed but its

execution stayed, plus 60 days because he did not appeal), which was long before Senate Bill 180 took effect on January 1, 2018. (*McKenzie*, at pp. 1213-1214 [Senate Bill 180 "applies retroactively to cases in which the judgment was not yet final on January 1, 2018"]; *People v. Grzymski* (2018) 28 Cal.App.5th 799, 806 [same].) Senate Bill 180 therefore does not retroactively apply to reduce defendant's sentence.

The application of the Act to re-designate defendant's 2011 prison prior as a misdemeanor and, consequently, reduce his sentence by one year does not change this result. That is because the California Supreme Court has held that defendants may challenge felony-based enhancements imposed pursuant to Penal Code section 667.5 when the underlying felony giving rise to the enhancement is re-designated as a misdemeanor under the Act. (*People v. Buycks* (2018) 5 Cal.5th 857, 871; see also Pen. Code, § 1170.18, subd. (k) [re-designated offense "shall be considered a misdemeanor for all purposes"].)

Having conducted our own examination of the record, we are satisfied that defendant's appellate counsel has fully complied with his responsibilities and that no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110 (*Kelly*); *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. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-279; *Kelly*, at pp. 123-124.)

The order is affirmed.

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*LUI, P.J., CHAVEZ, J., HOFFSTADT, J.