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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CALVIN DEWAYNE HOLT,

Defendant and Appellant.

B295568

(Los Angeles County  
Super. Ct. No. MA065756)

APPEAL from an order of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Calvin Holt appeals from the judgment entered after he was resentenced in accordance with our remand order in his first appeal. Holt's counsel filed an opening brief which raises no issues and asks this court for an independent review under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Holt then filed a supplemental brief raising specific issues. We have independently reviewed the record on appeal and considered the brief filed by Holt and his appointed counsel. We conclude the appeal raises no reasonably arguable issues and affirm.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

In 2016, a jury found Holt guilty of first degree robbery and a firearm allegation to be true. (Pen. Code, §§ 211, 12022, subd. (a)(1).) Holt was sentenced to 35 years to life in state prison. On appeal, Holt argued the trial court erred in not ordering a competency hearing because defense counsel had declared a doubt as to Holt's competency, and Holt had been prescribed anti-psychotics for years, he was hearing voices during trial, and had swallowed a razor blade during trial. We found the trial court did not error in finding Holt not competent to stand trial.

We affirmed the judgment as modified, directing the trial court to strike a one-year sentence under Penal Code section 667.5, subdivision (b). On remand, the trial court modified the judgment to strike the one-year, and ordered that the judgment "remain affirmed in all other respects."

Holt filed a timely notice of appeal.

### ***DISCUSSION***

We appointed counsel to represent appellant on appeal. Appellant's court-appointed counsel filed an opening brief in which he raised no issues and asked this court to review the record independently pursuant to *People v. Wende, supra*, 25 Cal.3d 436, 441. On June 11, 2019, we notified appellant he

had 30 days to submit any contentions or issues he wished us to consider. Holt filed a supplemental brief raising 12 claims of error.

While appellant has appealed from the judgment entered upon the modification of his judgment, the majority of the issues he raises pertain to the original trial and sentence. These are claims that either were or should have been raised in his first appeal. His convictions were affirmed in that appeal and that opinion is final and may not be reargued. (See *People v. Murphy* (2001) 88 Cal.App.4th 392, 395; *People v. Senior* (1995) 33 Cal.App.4th 531, 535–537.)

To the extent Holt’s contentions pertain to ineffective assistance of trial counsel, he cites to evidence outside the record in this appeal, and claims of ineffective assistance of counsel on such matters “generally must be raised in a petition for writ of habeas corpus.” (*People v. Salcido* (2008) 44 Cal.4th 93, 172.)

The remaining contention Holt raises concerns his right to be present at all critical stages of the prosecution. (See *People v. Rodriguez* (1998) 17 Cal.4th 253, 260.) He argues (1) the trial court violated his constitutional right to be present at resentencing, and (2) he was denied equal protection because another defendant in a separate criminal case was given the opportunity to be present at a resentencing hearing. However, the trial court’s ministerial act of striking of a one-year enhancement pursuant to this Court’s direction does not constitute a critical stage of the criminal prosecution such that Holt had a constitutional right to be present. (See *Hall v. Moore* (11<sup>th</sup> Cir. 2001) 253 F.3d 624, 627.) Holt has also not made any showing that the other referenced defendant was “similarly situated” such that equal protection of the law was an issue. (*People v. Rhodes* (2005) 126 Cal.App.4th 1374, 1383.)

We therefore conclude that no reasonably arguable legal or factual issues exist.

***DISPOSITION***

The judgment is affirmed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.