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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERT MATTHEW HERRERA,

Defendant and Appellant.

B296227

(Los Angeles County
Super. Ct. No. KA111911)

Appeal from an order of the Superior Court of Los Angeles County, Victor D. Martinez, Judge. Affirmed.

Adrian K. Panton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In July 2015, Gilbert Matthew Herrera used a two inch by four inch piece of wood to strike an elderly woman before fleeing with her purse. He was charged in an information with one count of second degree robbery (Pen. Code, § 211¹) with special allegations he had personally used a deadly weapon in committing the offense (§ 12022, subd. (b)(1)), and had inflicted great bodily injury on a victim over 70 years of the age (§ 12022.7, subd. (c)). The information also specially alleged Herrera had suffered one prior serious felony conviction (§ 667, subd. (a)) and had served a separate prison term for a felony (§ 667.5, subd. (a)).

In 2016, Herrera entered a negotiated plea of guilty to second degree robbery and admitted the special allegations he had inflicted great bodily injury on a victim over 70 years of age and had suffered one prior serious felony conviction. Herrera's 16-year aggregate state prison sentence included one five-year enhancement under section 667, subdivision (a)(1).

In 2019, Herrera petitioned for resentencing under Senate Bill No. 1393 (2017-2018 Reg. Sess.) (Stats. 2018, ch. 1013, §§ 1-2), which, effective January 1, 2019, allows the trial court to exercise discretion to strike or dismiss the formerly mandatory section 667, subdivision (a)(1), prior serious felony enhancement.

In denying the petition, the court explained Herrera had agreed to the disposition and his sentence was significantly less than the maximum permitted for the charged count and special allegations.

Herrera filed a timely notice of appeal.

¹ Undesignated statutory references are to the Penal Code.

DISCUSSION

We appointed counsel to represent Herrera in his appeal. After reviewing the record, counsel filed a brief raising no issues. On August 28, 2019, we gave Herrera notice he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted this court to consider. We have received no response.

Herrera was not entitled to the relief he sought. Senate Bill No. 1393 does not apply retroactively to cases like Herrera's that were final prior to January 1, 2019. (See *People v. Garcia* (2018) 28 Cal.App.5th 961, 973 ["it is appropriate to infer, as a matter of statutory construction, that the Legislature intended Senate Bill 1393 to apply to all cases to which it could constitutionally be applied, that is, to all cases not yet final when Senate Bill 1393 [became] effective on January 1, 2019"]; *People v. Galindo* (2019) 35 Cal.App.5th 658 [same]; see also *People v. Conley* (2016) 63 Cal.4th 646, 657 ["[t]he *Estrada* rule rests on an inference that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that were final and sentences that are not"].)

We have examined the entire record and are satisfied Herrera's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The order is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.