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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME AGUAYO,

Defendant and Appellant.

B297117

(Los Angeles County  
Super. Ct. No. BA387239)

Appeal from an order of the Superior Court of Los Angeles County, Leslie A. Swain, Judge. Affirmed.

Jaime Aguayo, in pro. per.; and Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Jaime Aguayo appeals from an order denying his petition for resentencing brought under Senate Bill No. 1393. Aguayo’s appellate attorney filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

### **BACKGROUND**

Jaime Aguayo was charged with multiple offenses related to various incidents of domestic violence against his girlfriend in June and July of 2011.<sup>1</sup> In 2012, a jury found Aguayo guilty of one count of inflicting injury on a cohabitant (including a special allegation of personally using a deadly or dangerous weapon), two counts of assault, one count of criminal threats, two counts of possession of a firearm by a felon, and one count of possession of ammunition by a felon. The court sentenced Aguayo to a total prison term of 18 years and eight months, which included a five-year enhancement for a prior serious felony conviction in connection with the criminal threats count (Pen. Code, § 667, subd. (a)(1)). On July 29, 2013, we affirmed. (*People v. Aguayo*, *supra*, B243584.)

On February 5, 2019, Aguayo, in pro. per., filed a petition for resentencing under Senate Bill No. 1393, which granted trial courts new power to strike or dismiss sentencing enhancements

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<sup>1</sup> On our own motion, we take judicial notice of the docket and records, including our opinion affirming the judgment of conviction and sentence in Aguayo’s first appeal, *People v. Aguayo* (July 29, 2013, B243584) [nonpub. opn.]. (Evid. Code, § 452, subd. (d); *Epic Communications, Inc. v. Richwave Technology, Inc.* (2015) 237 Cal.App.4th 1342, 1347, fn. 3 [“ ‘a court may take judicial notice of the contents of its own records’ ”]; e.g., *Deschene v. Pinole Point Steel Co.* (1999) 76 Cal.App.4th 33, 37, fn. 2 [sua sponte taking judicial notice of unpublished prior opinion].)

under Penal Code section 667, subdivision (a)(1) in certain circumstances. On March 12, 2019, the trial court denied Aguayo's petition essentially because Senate Bill No. 1393 applied only to judgments that were not yet final on January 1, 2019 (the law's effective date), and Aguayo's conviction had become final in 2014. Aguayo timely filed a notice of appeal from the March 12, 2019 order.

We appointed counsel to represent Aguayo on appeal. Counsel examined the record and filed an opening brief raising no issues and asking this Court to review the record. Counsel sent the *Wende* brief and copies of the record on appeal to Aguayo and informed him of his right to file a supplemental brief. On September 27, 2019, we sent Aguayo a letter advising that within 30 days he could personally submit any contentions or issues he wished us to consider. Aguayo responded with a letter brief raising claims of prosecutorial misconduct and ineffective assistance of counsel at trial and sentencing in 2012.

### **DISCUSSION**

We have reviewed the record on appeal together with Aguayo's written contentions and find no arguable issues.

The trial court properly denied Aguayo's petition for resentencing because Senate Bill No. 1393 became effective on January 1, 2019, years after Aguayo's conviction became final. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973 [Senate Bill No. 1393 only applicable to cases not yet final on effective date of amendments].) Aguayo's other contentions pertain to issues that either were (or should have been) previously raised and decided against Aguayo in the first appeal, and/or are based on matters outside the record. (*People v. Gray* (2005) 37 Cal.4th 168, 196 ["multiple appellate review of the same issue in a single case

[generally precluded]”]; *People v. Jordan* (2018) 21 Cal.App.5th 1136, 1143 [“Waiver precludes successive appeals based on issues ripe for consideration in the prior appeal and not brought in that proceeding”]; *People v. Williams* (1988) 44 Cal.3d 883, 917, fn. 12 [“The scope of an appeal [based on a claim of ineffective assistance of counsel] is, of course, limited to the record of the proceedings below”].) Aguayo’s perfunctory note that Assembly Bill No. 1812 amended Penal Code section 1170, subdivision (d)(1) effective September 2018, with no explanation regarding how the amended law might apply here, does not raise an arguable issue. (*People v. Williams* (1997) 16 Cal.4th 153, 206.)

In light of the foregoing, we are satisfied that Aguayo’s appellate counsel has fully complied with the responsibilities set forth in *People v. Kelly* (2006) 40 Cal.4th 106, 109-110, and *Wende, supra*, 25 Cal.3d at pages 441-442. No arguable issues exist.

#### **DISPOSITION**

The order is affirmed.

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CHANNEY, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.\*

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