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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff and Respondent,

v.

RODERICK HIMES,

Defendant and Appellant.

B276604

(Los Angeles County
Super. Ct. No. PA040991)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

Mark S. Devore for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Roderick Himes filed a petition for resentencing under Penal Code section 1170.18, subdivisions (a) and (b), commonly known as Proposition 47. The trial court denied Defendant's petition and he appealed. Appointed counsel on appeal filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm.

FACTS AND PROCEDURAL BACKGROUND

In 2002, Defendant robbed a woman while she was standing in front of her home and holding her infant daughter. He threatened her with the semblance of a gun under his shirt and took the woman's purse, which contained the spare key to her car. Days later, Defendant returned and stole the woman's car. Defendant then led police on a short-lived chase where he totaled the vehicle. The Fire Department had to cut open the roof of the car to free him.

Defendant was convicted of grand theft auto, unlawfully taking or driving a motor vehicle, evading an officer with willful disregard for the safety or property of others, and robbery. All four counts were felonies. On February 27, 2004, the trial court denied Defendant's motion to strike his prior "strike" conviction, and then sentenced him to a total term of 20 years, 8 months in state prison.

On September 27, 2005, this Court issued an unpublished opinion in case number B174160, affirming the underlying judgment and sentence in all respects.¹

¹ We grant counsel's request for this Court to take judicial notice of the unpublished opinion issued on September 27, 2005, by this Court in the underlying case (B174160). (See Evid. Code, §§ 451, 452; Cal. Rules of Court, rule 8.1115(b)(2).)

Eleven years later, Defendant requested the trial court to reduce his sentence in a pleading entitled “Proposition 47 Motion and Penal Code section 11710.18, [subds.] (a) and (b).” Defendant argued that the trial court abused its discretion by not striking Defendant’s prior robbery with use of a weapon conviction. Defendant reasoned that because he had not committed an offense listed in one of Proposition 47’s statutory exclusions, his robbery sentence should be reduced to a misdemeanor. Defendant requested the trial court to conduct a suitability hearing to determine if Defendant was eligible for a sentence reduction for counts 1, 3, and 4 of his convictions. Defendant also asked his grand theft auto conviction and evading a police officer convictions be reduced to misdemeanors. Lastly, Defendant asserted that the \$9,000 restitution fine should be reduced because it was not supported by evidence.

On June 17, 2016, the trial court heard and denied Defendant’s motion in all respects. The court stated:

“In the Proposition 47 Motion, the defendant makes the following assertions and arguments, all of which are not persuasive:

“He claims that the sentencing judge abused her discretion by not striking the allegation relating to his prior robbery conviction. This is a matter that could have been raised during his direct appeal. (His conviction in that appeal was affirmed . . .)

“He claims that his grand theft auto conviction (Count 1) should be reduced to a misdemeanor in light of Proposition 47. Because the loss to the victim was found to be \$9000 and the defendant has a prior conviction for robbery, the reduction is not authorized by law.

“He complains that the amount of restitution and restitution fine ordered is excessive. This is a matter that could have been raised on appeal.

“He asks this court to reduce the evading an officer charge (Count 3) to a misdemeanor pursuant [to] Penal Code 17b. That is a matter that could have been requested at the time of his sentencing hearing. Even if this court had the discretion to grant the relief requested, it would not do so in light of the egregious nature of the defendant’s crimes and his criminal history.

“With respect to the Romero motion, that motion was heard and denied by the sentencing judge on February 27, 2004.

“Accordingly, both motions are denied.”

On August 1, 2016, Defendant filed a timely notice of appeal. On January 13, 2017, his appointed counsel filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436, in which no issues were raised. The brief included a declaration from counsel that he reviewed the record and sent Defendant a letter advising him that such a brief would be filed and that he could file a supplemental brief if he chose to. That same day, this court sent Defendant a letter advising him that a *Wende* brief had been filed and that he had 30 days to submit a brief raising any issues he wanted us to consider. Defendant did not file a supplemental brief.

DISPOSITION

We have examined the entire record and are satisfied that appellant’s attorney fully complied with his responsibilities and

that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259; *Wende, supra*, 25 Cal.3d 436.). We affirm the judgment.

RUBIN, Acting P.J.

WE CONCUR:

FLIER, J.

GRIMES, J.