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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.

THOMAS E. BILLINGS,

Defendant and Appellant.

B251548

(Los Angeles County
Super. Ct. No. KA042336)

APPEAL from an order of the Superior Court of Los Angeles County. William C. Ryan, Judge. Affirmed.

Jonathan B. Steiner and James A. Uyeda, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On July 18, 2013, Thomas E. Billings filed a petition for recall of sentence pursuant to Penal Code section 1170.126,¹ which codifies part of the “Three Strikes Reform Act” (Prop. 36, § 6, as approved by voters, Gen. Elec. (Nov. 6, 2012), effective Nov. 7, 2012). In his petition, Billings represented that he is serving a third-strike sentence for a 1999 conviction for second degree robbery under section 211. On July 26, 2013, the trial court denied the petition with prejudice because Billings’s third-strike offense of second degree robbery is a violent felony conviction, which renders him ineligible for resentencing under section 1170.126. Billings filed a notice of appeal.²

We appointed counsel to represent Billings in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) On December 6, 2013, we directed appointed counsel to immediately send the record on this appeal and a copy of the opening brief to Billings and notified Billings that within 30 days from the date of the notice he could submit by letter or brief any ground of appeal, contention or argument he wished us to consider. We did not receive a response from him.

We have examined the entire record and determined that, because Billings’s third-strike offense of second degree robbery is a violent felony (§ 667.5, subd. (c)(9)), he cannot benefit from the provisions of section 1170.126. (§ 1170.126, subds. (b) & (e)(1).) We are satisfied that Billings’s attorneys have fully complied with their responsibilities and that no arguable appellate issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

¹ Statutory references are to the Penal Code.

² The question whether a defendant has the right to appeal the denial of a petition to recall his sentence pursuant to section 1170.126 when the trial court determined that he did not meet the threshold eligibility requirements for resentencing currently is pending before the Supreme Court. (*Teal v. Superior Court*, review granted July 31, 2013, S211708.)

DISPOSITION

The order is affirmed.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

MILLER, J.*

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