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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.

HENRY CHARLES BARNETT,

Defendant and Appellant.

B262984

(Los Angeles County  
Super. Ct. No. YA025301)

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

Tyrone A. Sandoval, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant, Henry Charles Barnett, appeals from the January 14, 2015 order denying his Penal Code section 1170.18 resentencing petition.<sup>1</sup> We appointed counsel to represent defendant on appeal. After examination of the record, appointed appellate counsel filed an “Opening Brief” in which no issues were raised. Instead, appointed appellate counsel requested we independently review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284.) On August 28, 2015, defendant filed a supplemental brief. Defendant asserts he should be resentenced pursuant to *People v. Vargas* (2014) 59 Cal.4th 635, 640-649 (*Vargas*). In *Vargas*, our Supreme Court held the commission of a robbery and carjacking against a single victim on one occasion constituted only one qualifying prior conviction for sentence enhancement purposes. (See *People v. Rusconi* (2015) 236 Cal.App.4th 273, 277-279.) We conclude no arguable contentions are present.

On October 4, 1984, defendant was convicted of 2 counts of violating section 288, subdivision (a), lewd or lascivious acts with a minor under 14 years of age. (§§ 667, subd. (d)(1), 667.5, subd. (c)(6), 1170.12, subd. (b)(1).) On January 24, 1996, defendant was convicted of auto theft in violation of Vehicle Code section 10851, subdivision (a). On March 15, 1996, defendant was sentenced to an indeterminate term of 25 years to life pursuant to sections 667, subdivision (e)(2)(ii) and 1170.12, subdivision (c)(2)(A)(ii). (Stats. 1994, ch. 12, § 1, p. 74; Prop. 184, as adopted by voters, Gen. Elec. (Nov. 8, 1994).) The auto theft sentence is the subject of this appeal.

On an uncertain date, defendants filed a section 1170.18 resentencing petition. Defendant does not qualify for resentencing under section 1170.18, subdivision (a). Vehicle Code section 10851, subdivision (a) is not specified as a qualifying conviction for resentencing under section 1170.18, subdivision (a). Additionally, defendant’s section 288, subdivision (a) prior convictions disqualify him from resentencing because he must register as a sex offender pursuant to section 290, subdivision (c). (§ 1170.18, subd. (i).)

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise stated.

Defendant, in his pro se supplemental brief, challenges his two prior October 4, 1984 prior lewd conduct convictions. Defendant thus asserts in 1996 he could not receive an indeterminate sentence. He reasons that under *Vargas, supra*, 59 Cal.4th at pages 640-649 he in fact had only been previously convicted of a single qualifying conviction. Defendant's arguments concerning *Vargas* are not properly before us on appeal. This appeal concerns only the denial of defendant's section 1170.18 resentencing petition. Moreover, defendant has the burden of proving is eligible for resentencing. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879-880.) Defendant has failed to show that the two 1984 lewd conduct convictions arose from a single act on one occasion. In any event, even if convicted only once of lewd conduct with a minor, defendant would be ineligible for resentencing because of his conviction and ensuing registration requirement. (§ 1170.18, subd. (a).) Appointed appellate counsel correctly determined defendant's contentions are frivolous.

The January 14, 2015 order denying defendant's resentencing petition is affirmed.

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TURNER, P. J.

We concur:

MOSK, J.

BAKER, J.