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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.

SCOTT SWEDLOW,

Defendant and Appellant.

B296133

(Los Angeles County  
Super. Ct. No. GA097613)

APPEAL from an order of the Superior Court of  
Los Angeles County, Teri Schwartz, Judge. Affirmed.

David M. Thompson, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In November 2015 Scott Swedlow threatened to stab two people at the Del Mar Gold Line station. He was charged in an information with two counts of making a criminal threat (Pen. Code, § 422)<sup>1</sup> with special allegations he had suffered five prior serious or violent felony convictions within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12) and four serious felony convictions within the meaning of section 667, subdivision (a)(1). The information also specially alleged Swedlow had served five separate prison terms for felonies (§ 667.5, subd. (b)).

In 2016 Swedlow entered a negotiated plea of no contest to one count of making a criminal threat and admitted the special allegations he had suffered one prior strike conviction and one prior serious felony conviction. Swedlow's 11-year aggregate state prison sentence included one five-year enhancement under section 667, subdivision (a)(1).

In 2019 Swedlow moved 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. The court denied the motion, ruling Senate Bill No. 1393 did not apply retroactively to cases like Swedlow'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)

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<sup>1</sup> Statutory references are to this code.

35 Cal.App.5th 658, 664 [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”].)

Swedlow filed a timely notice of appeal.

### DISCUSSION

We appointed counsel to represent Swedlow in his appeal. After reviewing the record, counsel filed a brief raising no issues. On June 12, 2019 we gave Swedlow 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.

After granting Swedlow one extension of time, we received a supplemental brief on July 29, 2019 in which Swedlow argued, although his case was final several years before the effective date of Senate Bill No. 1393, principles of equal protection require retroactive application of the statute to his case.

Because Swedlow agreed to the five-year enhancement as part of a plea bargain, resulting, to his benefit, in dismissal of one additional felony count and eight additional enhancements, including three section 667, subdivision (a), prior serious felony enhancements, he is foreclosed from challenging his sentence. (See *People v. Hester* (2006) 22 Cal.4th 290, 295 [“Where the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the

appellate process”]; see also *People v. Cuevas* (2008) 44 Cal.4th 374, 383.)<sup>2</sup>

We have examined the entire record and are satisfied that appellate counsel for Swedlow has complied with his responsibilities and that there are no arguable issues. (*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.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.

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<sup>2</sup> Although for the reason indicated we do not address the merits of Swedlow’s equal protection argument, it is worth noting that the Supreme Court has held, “[T]he ability to elect to be sentenced under a law enacted after the date of the commission of a crime is not a constitutional right but a benefit conferred solely by statute. It is not unconstitutional for the legislature to confer such benefit only prospectively, neither is it unconstitutional for the legislature to specify “a classification between groups differently situated, so long as a reasonable basis for the distinction exists.”” (*People v. Floyd* (2003) 31 Cal.4th 179, 189-190.)