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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID DANIEL NEVAREZ,

Defendant and Appellant.

B254544

(Los Angeles County
Super. Ct. No. KA041127)

THE COURT:*

After a jury trial, David Daniel Nevarez (Nevarez) was convicted on two counts of second degree robbery (Pen. Code, § 211),¹ two counts of petty theft with a prior conviction (§ 666), and one count of second degree burglary (§ 459). (*People v. Nevarez* (Oct. 24, 2000, B132831) [nonpub. opn.] (*Nevarez I.*)) The trial court made findings that Nevarez had two qualifying prior felony convictions (strikes) under the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12), and that he had a prior conviction for which he

* ASHMANN-GERST, Acting P. J., CHAVEZ, J., FERNS, J.†

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

¹ All further statutory references are to the Penal Code unless otherwise indicated.

served a prison term (former § 667.5, subd. (b)). He was sentenced to a prison term of 25 years to life on count 1, and also a consecutive term of 25 years to life on count 4. The trial court stayed sentence on the other counts, and it also stayed imposition of the one-year enhancement for the prior prison term finding under former section 667.5, subdivision (b). Subsequently, in *Nevarez I*, we reversed the judgment because the trial court had not properly exercised its discretion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, in connection with Nevarez’s motion to strike one or both of the prior strike findings. On remand, the trial court sentenced Nevarez to an aggregate sentence of 52 years to life based on two sentences of 25 years to life plus two one-year enhancements due to the prior prison term. In *People v. Nevarez* (May 13, 2003, B155431) [nonpub. opn.] (*Nevarez II*), we modified the judgment to strike the imposition of one of the prior prison term enhancements so that the aggregate term of punishment was reduced to 51 years to life. As modified in *Nevarez II*, the judgment was affirmed.

In April 2013, Nevarez filed a petition for recall of sentence pursuant to Proposition 36. (§ 1170.126.) It was denied on the grounds that Nevarez was ineligible for resentencing under Proposition 36 because second degree robbery is a violent felony listed in section 667.5, subdivision (c)(9). Nevarez appealed. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*), raising no issues. On May 12, 2014, we notified Nevarez of his counsel’s brief and gave him leave to file, within 30 days, his own brief or letter stating any grounds or argument he wants us to consider. Nevarez did not file a brief or letter. As explained below, we now affirm the order.

Section 1170.126, subdivision (b) provides: “Any person serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 upon conviction, whether by trial or plea, of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, may file a petition for a recall of sentence . . . to request resentencing in accordance with the

provisions of subdivision (e) of Section 667, and subdivision (c) of Section 1170.12, as those statutes have been amended[.]” Section 667.5, subdivision (c)(9) defines all robberies as violent felonies. Thus, the trial court properly denied Nevarez’s petition for recall of sentence.

After examining the record and considering the relevant statutes, we are satisfied that Nevarez’s appellate counsel complied with his responsibilities. We conclude that Nevarez has received adequate and effective appellate review of the judgment entered against him by virtue of counsel’s compliance with the *Wende* procedure and our review of the record. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The order is affirmed.

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