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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.

CARLO R. LARA,

Defendant and Appellant.

B287433

(Los Angeles County
Super. Ct. No. PA077482)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dalila C. Lyons, Judge. Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted defendant and appellant Carlo Lara of second degree robbery (Pen. Code, § 211¹) and found true the allegation that he personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)). The trial court found true the allegation that defendant had a prior serious felony conviction within the meaning of section 667, subdivision (a). Defendant was sentenced to 16 years in state prison as follows: five years for the second degree robbery, doubled to 10 years under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), five years for the prior serious felony conviction, and one year for the personal weapon use.² We affirmed defendant's conviction in case number B259361.

Thereafter, defendant filed a petition for writ of habeas corpus in this court (case number B282925) challenging his sentence on the ground that the prior Three Strikes and section 667, subdivision (a) conviction had been reduced to a misdemeanor. On June 20, 2017, we issued an order to show cause, finding that defendant had “made a prima facie showing of an entitlement to an order to show cause directed only to the issue of the five-year enhancement under Penal Code section 667, subdivision (a), but not as to the strike prior under the Three Strikes law.” We sent the Superior Court a copy of defendant's habeas corpus petition and directed the Superior Court to, among

¹ All statutory citations are to the Penal Code.

² The same prior conviction from a 2004 case (Los Angeles County Superior Court Case No. PA047210) served as the basis for the Three Strikes sentence and the section 667, subdivision (a) enhancement.

other things, conduct further habeas corpus proceedings as provided in California Rules of Court, rule 4.551(d)-(g).

On November 7, 2017, the Superior Court conducted further habeas corpus proceedings. The Los Angeles County District Attorney's Office filed a written concession stating that defendant's prior conviction in case number PA047210 had been reduced to a misdemeanor prior to his sentencing in this case and thus should not have been used to impose the section 667, subdivision (a) five-year enhancement.

The Superior Court granted defendant habeas corpus relief, striking the section 667, subdivision (a) five-year enhancement and thereby reducing defendant's sentence to 11 years. Although expressly not a part of our order to show cause, the Superior Court also addressed, apparently on defendant's motion, whether defendant's prior conviction in case number PA047210 was properly used as a strike conviction under the Three Strikes law. It determined that defendant was properly sentenced under the Three Strikes law.

On December 14, 2017, defendant filed a document entitled "Nunc Pro Tunc Petition for Writ of Mandate/Prohibition." There is no indication in the record that the Superior Court ruled on that petition prior to defendant filing his notice of appeal on January 9, 2018. In his notice of appeal, defendant asserted the basis for his appeal is: "Void judgment imposed in excess of court jurisdiction."³

³ Although defendant did not appeal from a guilty or no contest plea or an admission of a probation violation, his notice of appeal included a request for a certificate of probable cause, the stated grounds for which were: "The court imposed a three strikes term contrary to established law that prohibit[s]

On appeal, defendant's appointed counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436, requesting this court to conduct an independent review of the record to determine if there are any arguable issues on appeal. We advised defendant that he could submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Defendant did not file a brief or letter.

We have reviewed the record and are satisfied that defendant's counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.) Accordingly, we affirm the judgment.

KIN, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

classifying [a] misdemeanor as a felony" and "The court of appeal ordering Penal Code section 667(a) sentence void was imposed by the court in excess of the court's jurisdiction." The trial court did not rule on the request.

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