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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH EARL SMITH JR.,

Defendant and Appellant.

B297410

(Los Angeles County
Super. Ct. No. BA378233)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Abzug, Judge. Affirmed.

Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Conforming to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), Smith's counsel filed an opening brief containing a statement of facts but raising no issues. Counsel asks this court to review the record independently and to determine whether any arguable issues exist on appeal. We have reviewed the entire record and find no arguable issues exist. Smith did not submit a supplemental brief. We affirm.

All citations are to the Penal Code, unless otherwise specified. The facts of the underlying crimes Smith pleaded to are not relevant to the present appeal so we do not provide a summary. A relevant procedural history is provided.

I

In 2011, Smith pleaded no contest to four felony violations of section 594, subdivision (a). Smith admitted a weapon use allegation (§ 12022, subd. (b)(1)), a prior strike allegation (§ 667, subd. (b)-(i); § 1170.12, subd. (a)-(d)), a section 667, subdivision (a)(1) allegation, and that he had suffered prior convictions pursuant to section 667.5, subdivision (b).

Smith was sentenced to a total of 13 years in prison. He received the upper term of three years, doubled, plus an additional one year for the weapon use, five years for the section 667, subdivision (a)(1) enhancement, and one year pursuant to section 667.5, subdivision (b).

In 2016, Smith filed a motion for reconsideration of his restitution fine. The motion was denied on January 29, 2016. Smith appealed. This court affirmed.

On January 11, 2019, Smith filed a pro per petition seeking re-sentencing under Senate Bill No. 1393 (2017–2018 Reg. Sess.). The trial court denied Smith's petition on February 4, 2019,

finding Senate Bill 1393 did not apply retroactively to Smith's case because his case was final. Smith appealed.

Smith requests we take judicial notice of a minute order dated December 6, 2011, a minute order dated January 29, 2016, and the record in the prior case before this division, case number B271656. We grant the request and take judicial notice of these documents. (See Evid. Code, § 452, subd. (d).)

II

Smith filed a notice of appeal on April 9, 2019. We appointed counsel to represent Smith and his counsel filed a *Wende* brief. Counsel declared they reviewed the record. Counsel wrote to Smith explaining their evaluation of the record. Counsel further declared they advised Smith of his right under *Wende* to submit a supplemental brief.

Smith did not file a supplemental brief.

We have examined the entire record of the proceedings consisting of the clerk's transcript and are satisfied that appointed counsel fully complied with their responsibilities in assessing whether any colorable appellate issues exist. There are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

DISPOSITION

The judgment is affirmed.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.