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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIE NORTON,

Defendant and Appellant.

B295985

(Los Angeles County
Super. Ct. No. NA073794)

APPEAL from an order of the Superior Court of Los Angeles County, Gary J. Ferrari, Judge. Appeal dismissed.

Juliana Drous, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Willie Norton appeals from the trial court's order denying his motion to modify his sentence pursuant to Senate Bill No. 1393 (2017-2018 Reg. Sess.) (S.B. 1393), which grants trial courts the discretion to impose or strike a five-year sentence enhancement for a prior serious or violent felony conviction. Appellant's counsel on appeal filed a *Wende* brief (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)) requesting that we conduct an independent review of the record. We have reviewed the record and find the order is not appealable. The appeal is dismissed.

BACKGROUND

In 2008, appellant was charged with gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5, subd. (a), count 1),¹ driving under the influence (Veh. Code, § 23152, subd. (a), count 2), and driving with 0.08 percent or more alcohol in his blood (*id.*, § 23152, subd. (b), count 3). The information alleged appellant had suffered a prior conviction for robbery (§ 211), charged as a strike under the Three Strikes law (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)) and as a prior serious felony conviction (§ 667, subd. (a)(1)). The information also alleged appellant suffered four prior convictions (§ 667.5, subd. (b)).

In an open plea over the People's objection, on September 23, 2009, appellant pleaded no contest to all three counts and admitted to the prior conviction allegations. After the court clarified there was no exchange for appellant's plea, it accepted the plea and sentenced appellant to 17 years in state prison, consisting of the mid-term of six

¹ Subsequent references to statutes are to the Penal Code.

years in count 1, doubled by reason of his prior strike, plus an additional five years pursuant to section 667, subdivision (a)(1). The court sentenced appellant to a concurrent term of six months in count 2, and an additional six months in count 3, which it stayed under section 654. The court then struck the section 667.5, subdivision (b) prior conviction allegations and imposed various fines, fees and assessments (§§ 1202.4, subd. (b), 1202.45, subd. (a), 1465.8, subd. (a)(1)).

On December 24, 2018, appellant filed a motion to modify his sentence under S.B. 1393, requesting that the trial court exercise its discretion to strike the five-year section 667, subdivision (a)(1) enhancement. The court denied the motion, and appellant filed an appeal.

DISCUSSION

After reviewing the record, appellant's court-appointed counsel filed an opening brief, pursuant to *Wende, supra*, 25 Cal.3d 436, asking this court to conduct an independent review of the record to determine whether any arguable issues exist. On July 24, 2019, we advised appellant that he had 30 days within which personally to submit any contentions or issues he wished us to consider. To date, we have received no response.

S.B. 1393 applies retroactively only to cases which were not final on January 1, 2019, or the date the statute became effective. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 972–973.) At that time, appellant's conviction had been final for eight years. (See *People v. Vieira* (2005) 35 Cal.4th 264, 305–306 [a judgment becomes final when the time for

petitioning for a writ of certiorari in the United States Supreme Court has passed]; *In re Spencer* (1965) 63 Cal.2d 400, 405 [judgment deemed final at the “point at which the courts can no longer provide a remedy to a defendant on direct review”].)

Absent any new authority to resentence appellant under S.B. 1393, the trial court lacked jurisdiction to grant his request. (See *People v. Hernandez* (2019) 34 Cal.App.5th 323, 326–327.) Because the trial court lacked jurisdiction to modify appellant’s sentence, denial of his motion could not have affected his substantial rights. (*Id.* at p. 327; see § 1237.) Thus, the order denying the motion is not an appealable order, and the appeal must be dismissed. (*Id.* at p. 327.)

DISPOSITION

The appeal is dismissed.

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WILLHITE, Acting P. J.

We concur:

COLLINS, J.

CURREY, J.