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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.

CLAUDELL GREEN,

Defendant and Appellant.

B276560

(Los Angeles County
Super. Ct. No. VA031149)

APPEAL from an order of the Los Angeles Superior Court,
Michael A. Cowell, Judge. Affirmed.

Carlo Andreani, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

In his seventh appeal related to a 12-year-old judgment for robbery and carjacking, Claudell Green challenges the denial of his motion for a new trial as untimely. Green's appointed counsel filed an opening brief in which no issues were raised. Green then submitted a typed letter and supplemental brief contending his new trial motion should have been granted because the trial court had erred in denying his motion to substitute appointed trial counsel in 1995. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Green and at least one accomplice robbed two banks in 1995. After leaving the scene of the second robbery, Green carjacked a vehicle. A jury subsequently convicted Green of three counts of second degree robbery (Pen. Code, § 211),¹ two counts of possession of an assault weapon (§ 12280, subd. (b))² and one count of carjacking (§ 215, subd. (a)). The jury found true the special allegation that Green had personally used a firearm in two of the robberies and the carjacking and that a principal was armed with a firearm in the third robbery.³ The trial court found Green had two prior serious felony convictions requiring

¹ Statutory references are to this code.

² We subsequently reversed Green's convictions for possession of an assault weapon due to insufficiency of the evidence. (*People v. Green* (Mar. 12, 1977, B096234) [nonpub. opn.].)

³ The jury actually found a principal was armed with an automatic weapon under section 12022, subdivision (a)(2), but that finding was subsequently reduced to the one-year enhancement for a principle armed with a firearm under section 12022, subdivision (a)(1). (*People v. Green* (Mar. 13, 2002, B147249) [nonpub. opn.].)

sentencing under section 667, subdivision (a)(1), and the three strikes law (§§ 667, subds. (b)-(i), 1170.12).

Thereafter, through a series of five appeals, we repeatedly remanded this matter to the trial court for *Marsden* hearings⁴ and for resentencing. (*People v. Green* (Feb. 17, 2004, B167175) [nonpub. opn].) As a result of our most recent remand on April 22, 2004, the trial court sentenced Green to an aggregate indeterminate state prison term of 94 years to life as a third strike offender on three counts of robbery and one count of carjacking and related firearm-use enhancements.

In 2015 Green filed a motion to dismiss his 1982 prior strike convictions for two robberies in Los Angeles Superior Court case number A455280.⁵ We affirmed the trial court's order denying Green's motion to dismiss. (*People v. Green* (Sept. 15, 2016, B267736) [nonpub. opn].)

Most recently on June 1, 2016, Green, representing himself, filed a motion for a new trial, which the trial court summarily denied as untimely.

⁴ *People v. Marsden* (1970) 2 Cal.3d 118 addressed the circumstances under which a criminal defendant has a right to have his or her appointed counsel replaced and the procedures to be used by the trial court in determining whether those circumstances exist. The hearing concerning the defendant's request for new appointed counsel is referred to as a *Marsden* hearing.

⁵ The robberies occurred when Green, armed with a shotgun, ordered two victims from their car and robbed them on June 14, 1982. (*People v. Green, supra*, B096234.)

DISCUSSION

Green filed a notice of appeal “from the judgment and sentence against him,” which we construe as an appeal from the order denying his new trial motion. We appointed counsel to represent Green on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On January 18, 2017 we advised Green he had 30 days within which to personally submit any contentions or issues he wished us to consider.

On February 28, 2017 we received a typed two-page “open letter to the court” in which Green contended the judge who had presided over the trial in 1995 had violated his due process rights by denying his motion to replace his appointed counsel partially based on “false evidence” consisting of videotapes and photographs depicting one of the 1995 robberies. Attached to the document were a letter from appellate counsel and portions of the reporter’s transcript. On March 2, 2017 we received a typed three-page document entitled “Defendant[’s] Supplemental Motion Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441” in which Green made the same claim.

Green’s motion for a new trial was properly denied as untimely. (§ 1182 [application for new trial must be made and determined before judgment].) Furthermore, the *Marsden* issues underlying Green’s new trial motion were addressed in his prior appeals and, most recently, in Green’s petition for writ of habeas corpus, which we denied. (*In re Green* (Feb. 22, 2017, B280702) [nonpub. opn.].) Accordingly, having already been resolved, the issues are not properly before us. (See Cal. Rules of Court, rule 8.1115(b)(1).)

We have examined the record and are satisfied Green's appellate attorney has complied with the responsibilities of counsel 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.

SMALL, J.*

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