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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.

DUKE ANTHONY WALKER,

Defendant and Appellant.

B260201

(Los Angeles County
Super. Ct. No. NA027421)

THE COURT:*

Duke Anthony Walker appeals from the denial with prejudice of his petition for recall of sentence and a new sentencing hearing pursuant to Penal Code section 1170.126.¹ Defendant was sentenced in July 1996 to 65 years to life under the Three Strikes law (§§ 667, subd. (b)–(i), 1170.12, subds. (a)–(d).) The trial court found true three allegations that defendant had suffered a prior serious felony conviction. In count 1, a violation of section 459 (first degree residential burglary), the court sentenced defendant to 25 years to life and five years for each of defendant’s three prior serious felony convictions under section 667, subdivision (a). In count 2, a violation of Health

* BOREN, P. J., CHAVEZ, J., HOFFSTADT, J.

¹ All further references to statutes are to the Penal Code unless stated otherwise.

and Safety Code section 11350, subdivision (a) (possession of a controlled substance), the trial court sentenced defendant to a consecutive term of 25 years to life.

We appointed counsel to represent defendant on this appeal. After examination of the record, counsel filed an “opening brief” containing an acknowledgment that she had been unable to find any arguable issues. On May 19, 2015, we advised defendant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. On June 1, 2015, defendant filed a supplemental brief.

Although defendant’s appeal is from the denial of his petition for recall of sentence, defendant raises issues regarding his trials on the charges and prior conviction allegations. He argues that his trial counsel was ineffective, that his prior felony convictions should not have been found to be strike priors, that two of his prior felony convictions were within the commission of a single act, that the truth of the allegations of his prior convictions under section 459 were not proved, that he had a due process right to testify at his sentencing hearing, and that the documentary evidence was insufficient to support the court’s finding he had suffered strike priors in 1979, 1983, and 1987. These issues are not properly before this court.

With respect to defendant’s Proposition 36 petition for recall of sentence pursuant to section 1170.126, defendant argued that his current Health and Safety Code section 11350, subdivision (a) offense was not a serious felony, and he was entitled to resentencing on that count alone. The court denied his petition because one of his current convictions was for a serious felony (first degree burglary) under section 1192.7, subdivision (c)(18).² Defendant filed a notice of appeal on November 13, 2014.

According to documents submitted by appellate counsel as an augmentation of the record (exhibits A & B), a Proposition 47 petition filed by defendant pursuant to section

² Subsequent to the denial of defendant’s petition, the California Supreme Court held in *People v. Johnson* (2015) 61 Cal.4th 674 that an inmate is eligible for resentencing on a current offense that is neither serious nor violent even though the inmate has another current conviction that is serious or violent. (*Id.* at p. 695.)

1170.18, subdivision (a), was granted on December 3, 2014.³ A copy of the minute order (exhibit A) from that date shows that the court ordered defendant's felony conviction in count 2, the violation of Health and Safety Code section 11350, subdivision (a), to be designated as a misdemeanor. The People did not oppose the reduction. The court resentenced defendant to serve 364 days in any state facility and ordered an amended abstract of judgment to issue "forthwith." A copy of the minute order was faxed to the Department of Corrections and Rehabilitation. Exhibit B is a copy of the amended abstract of judgment showing the felony conviction for first degree burglary only, with a sentence of 25 years to life and 15 years for the three section 667, subdivision (a) enhancements.

As a result of defendant's successful petition under Proposition 47, defendant's appeal of the denial of his previous petition for recall of sentence and resentencing in count 2 is moot. The abstract of judgment in defendant's case no longer shows a felony conviction or sentence in count 2. Therefore, we shall dismiss his appeal.

We have examined the entire record, and we are satisfied that defendant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The appeal is dismissed.

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³ The record does not contain a copy of this petition.