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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.

GARY ALLEN CECIL,

Defendant and Appellant.

B280347

(Los Angeles County
Super. Ct. No. MA045717)

THE COURT:*

Over 30 years ago, “Kimberly was working . . . in Northern California. . . . One night, Kimberly went out with one of her customers and was ‘date raped.’ During the trial for that crime, in the court hallway, Kimberly’s rapist looked in her direction and mouthed, “I’m going to kill you.” She was terrified.” (*People*

* ASHMANN-GERST, Acting P.J., CHAVEZ, J., HOFFSTADT, J.

v. Cecil (Apr. 12, 2012, B228850) [nonpub. opn.].) Years later, Kimberly received a threatening telephone call and letter from defendant and appellant Gary Allen Cecil, the man who had been convicted of raping Kimberly. (*People v. Cecil, supra*, B228850, at pp. 3–4.) Following trial, a jury convicted defendant of criminal threats (Pen. Code, § 422) and stalking (Pen. Code, § 646.9, subd. (a)). Defendant appealed, and we affirmed the judgment. (*People v. Cecil, supra*, B228850, at p. 2.)

On October 9, 2016, defendant sent the trial court a “Procedural Inquiry” related to Proposition 57. On October 31, 2016, the trial court notified defendant that it could not advise him at that time, “since the Proposition [had] not passed.” On November 9, 2016, after Proposition 57 passed, defendant sent another letter to the trial court, requesting a response to his prior inquiry.

On December 5, 2016, defendant filed an “Application for: Recall of Felony Sentence & designate conviction as misdemeanor; waiver of further Restitution payments.” On December 16, 2016, the trial court denied defendant’s request, refusing to recall his sentence and refusing to reduce the amount of restitution ordered. Three days later, the trial court addressed defendant’s inquiry regarding Proposition 57 and noted that it entitled defendant to petition the Board of Parole Hearings for relief, not the trial court.

Defendant’s timely appeal ensued.

Counsel was appointed to represent defendant in connection with this appeal. After examination of the record, counsel filed an “Opening Brief” in which no arguable issues were raised. On May 19, 2017, we advised defendant that he had

30 days within which to personally submit any contentions or issues for us to consider.

On or about June 11, 2017, defendant filed his “Appeal Contentions.” He seeks resentencing pursuant to Proposition 57, and argues that (1) Governor Jerry Brown committed an impeachable offense by lying to state voters when he represented that thousands of nonviolent prisoners would be released; (2) Proposition 57 is retroactive; (3) If Proposition 57 is not retroactive, then it is unconstitutional; and (4) The restitution fine imposed against defendant should be reduced because defendant is medically disabled.

We have examined the entire record and we are satisfied that defendant’s appellate counsel has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*).) As for the arguments that defendant himself raised, we conclude that the trial court did not err. Defendant was not entitled to recall of his sentence. And, defendant has not shown that the trial court erred in refusing defendant’s request to reduce the amount of restitution ordered.

Defendant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment and sentence entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123–124.)

The trial court’s order is affirmed.

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