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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.

ANTHONY L. HAMPTON,

Defendant and Appellant.

B296615

(Los Angeles County  
Super. Ct. No. YA088557)

APPEAL from an order of the Superior Court of Los Angeles County, Laura C. Ellison, Judge. Appeal dismissed.

California Appellate Project, Richard Lennon, Executive Director, and Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Anthony L. Hampton appeals from the trial court's order denying his petition for resentencing 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

As noted in our prior opinion (*People v. Hampton* (Oct. 21, 2015, B259664) [nonpub. opn.]), on December 3, 2013, appellant was charged by information with robbery (Pen. Code, § 211)<sup>1</sup> and resisting, obstructing, or delaying a peace officer (§ 148, subd. (a)(1)). The information alleged appellant had suffered three prior convictions for robbery (§ 211) and one prior conviction for first degree burglary (§ 459), charged as prior serious or violent felony convictions (§§ 1192.7, 667.5, subd. (c)), as strikes under the Three Strikes law (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)), and as prior serious felony convictions (§ 667, subd. (a)(1)). The information also alleged appellant served seven prior prison terms (§ 667.5, subd. (b)).

On August 26, 2014, appellant entered into a plea agreement in which he agreed to plead no contest to the robbery count, admit to the prior robbery convictions, and receive a sentence of 19 years. The

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<sup>1</sup> Subsequent references to statutes are to the Penal Code.

charged violation of section 148, subdivision (a)(1) was dismissed. Appellant was sentenced to a term of 19 years, consisting of the low term of two years, doubled by reason of his prior strike, plus three five-year enhancements pursuant to section 667, subdivision (a)(1). The court also imposed various fines, fees and assessments (§§ 1202.4, subd. (b), 1202.45, subd. (a), 1202.5, subd. (a), 1465.8, subd. (a)(1); Gov. Code, § 70373, subd. (a)(1)).

We affirmed appellant's conviction on October 21, 2015.

On March 5, 2019, appellant filed a petition for resentencing with the trial court, requesting that the court exercise its discretion under S.B. 1393 to strike the three five-year section 667, subdivision (a)(1) enhancements. 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 June 20, 2019, we advised appellant that he had 30 days within which personally to submit any contentions or issues he wished us to consider. We later granted appellant an extension to file a supplemental brief. 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 three years. (See *People v. Vieira* (2005) 35 Cal.4th 264, 305–306 [judgment becomes final when the time for petitioning for a writ of certiorari in the United States Supreme Court has passed]; see *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.