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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTWONE HAROLD MERCER,

Defendant and Appellant.

B296113

(Los Angeles County
Super. Ct. No. BA460993)

APPEAL from an order of the Superior Court of Los Angeles County, Laura F. Priver, Judge. Dismissed.

Antwone Harold Mercer, in pro. per.; Jenny M. Brandt, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

BACKGROUND AND DISCUSSION

On July 2, 2018, following a jury trial and the return of guilty verdicts, the trial court sentenced defendant Antwone Mercer to 15 years in state prison. The sentence included the imposition of a five-year enhancement pursuant to Penal Code section 667, subdivision (a)(1).¹

On July 5, 2018, defendant filed a notice of appeal in case number B291181, challenging his conviction and sentence. That appeal is pending.

On January 8, 2019, defendant filed a petition pursuant to section 1170, subdivision (d), requesting that the trial court exercise its discretion to strike the five-year enhancement, pursuant to Senate Bill No. 1393, which became effective on January 1, 2019, and amended sections 667 and 1385 to provide trial courts discretion to strike enhancements under section 667, subdivision (a) in furtherance of justice.

On January 10, 2019, the trial court denied defendant's petition, concluding that it lacked jurisdiction to grant the relief defendant requested.

On February 13, 2019, defendant filed the instant appeal, challenging the trial court's denial of his motion to strike the sentencing enhancement.

We appointed counsel to represent defendant in this appeal. Counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 requesting that we independently review the entire record to determine if there are any arguable issues. On July 18, 2019, defendant filed a supplemental brief, arguing that this court should remand this matter for the trial

¹ All further statutory references are to the Penal Code.

court to consider its discretion to strike the sentencing enhancement pursuant to Senate Bill No. 1393, and raising other challenges to the underlying sentence.

We have reviewed the record and are satisfied that defendant's appointed counsel has fully complied with her responsibilities in the instant appeal and no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.) We further conclude that the trial court's order denying defendant's petition is not an appealable order and we thus dismiss this appeal. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1208; *People v. Mendez* (2012) 209 Cal.App.4th 32, 34, fn. 1.)

DISPOSITION

The appeal is dismissed.

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KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.