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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SHALUN DIQUE SMITH,

Defendant and Appellant.

B295914

(Los Angeles County
Super. Ct. No. TA077799)

APPEAL from an order of the Superior Court of
Los Angeles County, Kelvin D. Filer, Judge. Dismissed.

Ann Krausz, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On March 20, 2006, defendant Shalun Dique Smith, pleaded no contest to voluntary manslaughter in violation of Penal Code¹ section 192, subdivision (a) and admitted as true personally using a firearm in violation of section 12022.5. The trial court sentenced him to 11 years on the voluntary manslaughter conviction and the upper term of 10 years on the firearm enhancement. On November 13, 2018, defendant filed a motion for modification of sentence. The minute order denying that motion reasons defendant's sentence was an agreed-upon sentence on a lesser charge. On December 28, 2006, we affirmed the judgment.

On January 3, 2019, defendant filed a "Petition to Strike or Exclude the (10)Year Enhancement Re: P.C.§12022.5 Implementing the New (Senate Bill §1393)"² "and (P.C.§1385(a)(c)(1)." (Some capitalization omitted.) On January 16, 2019, the trial court denied the petition for the following reasons: (1) "The relief sought was denied in a previous appeal and in prior motions"; (2) "The defendant's sentence was an agreed upon disposition between all parties"; and (3) "SB620 does not create a free-standing right to resentencing." The trial court also denied defendant's habeas corpus petition.

¹ All undesignated statutory citations are to the Penal Code.

² In his petition, defendant refers to Senate Bill 1393 and Senate Bill 620 apparently requesting the trial court to strike the firearm enhancement under the authority of Senate Bill 620. (2017–2018 Reg. Sess.) The subject of Senate Bill 1393 is the enhancement in section 667, subdivision (a)(1). (Sen. Bill No. 1393 (2017–2018 Reg. Sess.)) Defendant's sentence, however, does not include an enhancement under section 667, subdivision (a)(1).

On February 8, 2019, defendant filed a notice of appeal in which he requested a certificate of probable cause based on the following: (1) he objects to the trial court’s November 13, 2018 minute order “[b]ecause of the new laws put in the place under (Senate Bill §§ 620 and 1393)”; and (2) he states he did not make a knowing and intelligent decision when he entered his plea because he could not have known about Senate Bill 620 and Senate Bill 1393 and had “never in life had a case with the court” and requests the “court dismiss the charge received d[ue] to the new state laws of SB 620 & 1393.”

Appointed appellate counsel filed an appellate brief requesting this court review the record for any error as required by *People v. Wende* (1979) 25 Cal.3d 436. This court permitted defendant the opportunity to file a supplemental brief. We have received no response. We have reviewed the record and find no arguable issue. Appointed counsel has fully complied with counsel’s responsibilities and no arguable issue exists. (*People v. Kelly* (2006) 40 Cal.4th 106, 125–126; *People v. Wende*, *supra*, 25 Cal.3d at pp. 441–442.)

There is no certificate of probable cause. Accordingly, we dismiss defendant’s appeal. (§ 1237.5.) We are aware of the split of authority as to whether for purposes of seeking relief under Senate Bill 620, a certificate of probable cause is required in a case not yet final.³ We need not address this split of authority because defendant’s case is final. (*People v. Phung* (2018) 25 Cal.App.5th 741, 762–763.)

³ See, e.g., *People v. Hurlic* (2018) 25 Cal.App.5th 50 and *People v. Galindo* (2019) 35 Cal.App.5th 658, review granted August 28, 2019, S256568.

DISPOSITION

The appeal is dismissed.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.