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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE L. CORTES,

Defendant and Appellant.

B297574

(Los Angeles County  
Super. Ct. No. VA130706)

APPEAL from an order of the Superior Court of Los Angeles County. Mildred Escobedo, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

\* \* \* \* \*

In July 2014, pursuant to a negotiated plea agreement, defendant and appellant Jose L. Cortes, who was facing nine separate counts, pled no contest to carjacking (Pen. Code, § 215, subd. (a) [count 1]) and second degree robbery (§ 211 [count 8]). Defendant admitted an allegation of personal gun use as to both counts (§ 12022.53) and further admitted having suffered a prior conviction for a serious or violent felony within the meaning of the “Three Strikes” law and section 667, subdivision (a)(1).

The parties stipulated to a factual basis for the plea and the court accepted defendant’s waivers on the record, finding them to have been knowingly, intelligently and voluntarily made. The remaining counts and special allegations were dismissed pursuant to Penal Code section 1385.

In accordance with the negotiated terms of the agreement, the court sentenced defendant to state prison for 23 years, calculated as follows: the low term of three years on count 1, doubled due to the strike prior, plus a consecutive 10-year term for the gun use enhancement and a consecutive 5-year term pursuant to Penal Code section 667, subdivision (a)(1); and, a consecutive one-year term on count 8 (one-third the midterm), doubled due to the strike prior. The court imposed and stayed a 10-year term for the gun use enhancement as to count 8.

In March 2019, almost five years after defendant’s conviction, he filed a petition for resentencing in the trial court arguing that the passage of Senate Bill No. 1393 inured to his benefit, notwithstanding the passage of time.

The trial court denied the petition, finding the new amendatory provisions did not apply to defendant’s long-final conviction. In its ruling, the trial court noted its review of the record, that defendant had been facing a maximum term of

confinement of 63 years 8 months, that he had received the benefit of the bargain in accepting a 23-year sentence and there was no factual or legal basis supporting resentencing. Defendant appealed.

We appointed appellate counsel to represent defendant. Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) in which no issues were raised. The brief included a declaration from counsel that she reviewed the record and sent a letter to defendant explaining her evaluation of the record. Counsel further declared she advised defendant of his right, under *Wende*, to submit a supplemental brief within 30 days.

Appellate counsel asked this court to take judicial notice of the reporter's transcript dated July 21, 2014, filed as the record in defendant's companion appeal, case No. B296033. We grant counsel's request and take judicial notice of the transcript.

Defendant filed a brief in which he raises the same arguments he raised below, citing *In re Estrada* (1965) 63 Cal.2d 740 and *Doe v. Harris* (2013) 57 Cal.4th 64 (*Doe*). Neither case supports the granting of any relief to defendant.

As relevant here, Senate Bill No. 1393 (2017-2018 Reg. Sess.) amended provisions of Penal Code section 667 and section 1385, granting discretion to trial courts to strike a prior serious felony conviction in connection with imposition of the five-year enhancement set forth in section 667, subdivision (a)(1). (Stats. 2018, ch. 1013, § 1, § 2.) The amendatory provisions became effective January 1, 2019, almost five years after defendant's conviction became final.

*In re Estrada* held that, absent evidence of contrary legislative intent, it is an "inevitable inference" that the

Legislature meant for new statutes that reduce the punishment for certain prohibited acts to apply retroactively to every case not yet final on appeal. (*In re Estrada, supra*, 63 Cal.2d at pp. 744-745.)

*Doe* concluded that a plea agreement does not have the effect of insulating the parties from changes in the law that the Legislature expressly intended to apply to them. (*Doe, supra*, 57 Cal.4th at p. 66.)

Nothing in Senate Bill No. 1393 reflects an express legislative intent that the amendatory provisions were to apply to defendants serving final sentences based on negotiated pleas. Unlike other recent enactments such as Proposition 47, Senate Bill No. 1393 did not create a specific procedural mechanism allowing defendants, including defendants serving a sentence pursuant to a plea, to petition to reduce their sentences.

We have examined the entire record and are satisfied that appointed counsel fully complied with her responsibilities in assessing whether any colorable appellate issues exist. We conclude there are no arguable appellate issues. (*People v. Kelly* (2006) 40 Cal.4th 106; *Wende, supra*, 25 Cal.3d 436.)

#### **DISPOSITION**

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.