

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GUY HERSHEL NELSON,

Defendant and Appellant.

B286421

(Los Angeles County
Super. Ct. No. GA054045)

Defendant and appellant Guy Hershel Nelson (defendant) appeals from the denial of his petitions to dismiss the judgment pursuant to Penal Code sections 17, subdivision (b), 17, subdivision (d)(2), 1203.4, 1203.4a, 1203.41, or 1203.49,¹ and his petition for recall of sentence. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On March 26, 2018, we notified defendant of his counsel's brief and gave him leave to file, within 30 days, his own brief or letter stating any grounds or argument he might wish to have considered. That time has elapsed, and defendant

¹ All further statutory references are to Penal Code unless otherwise indicated.

has submitted no brief or letter. We have reviewed the entire record, and finding no arguable issues, we affirm the judgment.

Defendant was charged by felony complaint in 2003 with second degree robbery in violation of section 211, commercial burglary in violation of section 459, and petty theft with a prior theft conviction under section 666. Defendant waived a preliminary hearing and trial, and was convicted of second degree robbery on a plea of no contest. The remaining counts were dismissed. The trial court suspended imposition of sentence, and placed defendant on three years of formal probation, with various terms and conditions. The court ordered defendant to serve 90 days in county jail, with combined custody credit of 25 days. On January 19, 2006, defendant admitted to a violation of probation, the trial court imposed a two-year prison sentence.

No appeal was taken from the judgment. In April 2017, defendant filed a motion to withdraw his 2003 guilty plea and to reduce his sentence due to a change in section 212.5 (designating certain robberies as robbery in the first degree). The trial court denied the motion and issued a certificate of probable cause. Defendant appealed that ruling, arguing that because the record had been destroyed, including the plea agreement, he should not be bound by the conviction, or he should be resentenced. This court affirmed the trial court's order in a nonpublished opinion. (See *People v. Nelson* (Dec. 15, 2017, B282695).)

While the appeal in case No. B282695 was pending, the trial court received two petitions for dismissal. Defendant's first petition was received on October 20, 2017, and the second on October 23, 2017. Both petitions were on Judicial Council forms entitled "Petition for Dismissal (Pen. Code, §§ 17(b), 17(d)(2), 1203.4, 1203.4a, 1203.41, 1203.49)."

Attached to the first petition was defendant's declaration in which he stated that the case should be dismissed for the

following reasons: the trial court violated unspecified court rules; the record of conviction is incomplete; defendant did not enter a plea in the case; defendant received ineffective assistance of counsel; and the record contains no evidence of a “willful plea agreement.” In his declaration attached to the second petition, defendant alleged the following reasons for his request for dismissal: (1) there is no longer an original record or “original copy”; (2) the original copy of the record was destroyed pursuant to Government Code 69955, subdivision (e);² (3) and under federal penal and constitutional law, a contract or plea agreement is no longer binding if the contract or plea agreement has been destroyed or is invalid.

On October 30, 2017, the trial court received a third petition, entitled, “Petition for Expedited Recall of Sentence,” which sought recall of defendant’s sentence and resentencing on the ground that the “record and plea agreement and or alleged record and alleged plea agreement in the case of GA054045 is and has been destroyed.” The petition further alleged that defendant should not be bound by the original judgment of conviction because the destruction of the original record and plea agreement rendered the alleged plea agreement invalid.

On October 31, 2017, the court read and considered defendant’s petitions before denying the relief sought pursuant to sections 17, subdivisions (b) and (d)(2), 1203.4, 1203.4a, 1203.41, and 1203.49, on the ground that defendant was ineligible, as he had been convicted of robbery and sentenced to

² Government Code 69955, subdivision (e) provides that reporter’s notes may be destroyed upon the order of the court after 10 years. Regarding the effect of lost or destroyed reporter’s notes, see generally, *People v. Bills* (1995) 38 Cal.App.4th 953, 959.

state prison after violating his probation.³ The trial court denied the petition for expedited recall of sentence on the ground that it lacked jurisdiction to do so.⁴ The court also noted that the conviction in this case was admitted as a “strike” in case No. GA091321, at a time when the missing information was presumably available. Defendant filed timely notices of appeal from the trial court’s orders.

We have examined the entire record and are satisfied that defendant’s appellate counsel has fully complied with her responsibilities and that no arguable issue exists. We conclude that 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 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 orders denying defendant’s petitions are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

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

³ Relief under those sections is available to the following defendants, under certain conditions: those who have fulfilled conditions of probation or were discharged from probation (§ 1203.4); those who were convicted of a misdemeanor and not granted probation, or convicted of an infraction (§ 1203.4a); those who were sentenced to jail for felonies (§ 1203.41); and those who were victims of human trafficking when the crime was committed (§ 1203.49).

⁴ See section 1170, subdivision (d); *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1424.