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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR TAPIA VARGAS,

Defendant and Appellant.

B290600

(Los Angeles County  
Super. Ct. No. BA137899)

APPEAL from an order of the Superior Court of  
Los Angeles County, William C. Ryan, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Victor Tapia Vargas appeals from an order denying his petition for recall of sentence and resentencing under Proposition 36, the Three Strikes Reform Act of 2012 (Pen. Code, § 1170.126). We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

A jury convicted Vargas of conspiracy to transport or sell cocaine and several other felony drug offenses in 1997. The jury also found true special allegations the amount of cocaine involved in the conspiracy exceeded four kilograms by weight, a principal was armed with a firearm during the commission of the offense, Vargas had suffered two prior strike convictions, and he had served three separate prison terms for felonies. The trial court sentenced Vargas as a third strike offender on the drug conspiracy charge to an indeterminate state prison term of 25 years to life plus three years for the prior prison term enhancements. The court stayed sentencing on the remaining three counts. (See *People v. Vargas* (Mar. 22, 1999, B119195) [nonpub. opn.]<sup>1</sup>)

In 2013, following passage of Proposition 36, Vargas petitioned the superior court to recall his sentence for the commitment offense and to resentence him as a second strike offender. The court issued an order to show cause why the petition should not be granted.

After several extensions the People filed an opposition to the petition in April 2014, arguing Vargas was statutorily ineligible for recall of his sentence and resentencing based upon

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<sup>1</sup> It appears the trial court did not impose the four-year enhancement under Health and Safety Code section 11370.4, subdivision (a)(2), for conspiracy to sell or transport cocaine exceeding four kilograms by weight.

the jury's finding the amount of cocaine involved in his commitment offense exceeded four kilograms within the meaning of Health and Safety Code section 11370.4. (Pen. Code, § 1170.126, subd. (e)(2) [defining eligibility requirements]; see Pen. Code, §§ 667, subd. (e)(2)(C)(i), 1170.12, subd. (c)(2)(C)(i).)

Following argument by counsel at a hearing on April 9, 2018, the superior court denied Vargas's petition, agreeing with the People and finding that Vargas was statutorily ineligible for recall and resentencing as a second strike offender because he was serving a sentence as a third strike offender for a drug offense with a Health and Safety Code section 11370.4 enhancement.

### **DISCUSSION**

We appointed counsel to represent Vargas in this appeal. After reviewing the record, counsel filed an opening brief raising no issues. On August 20, 2018 we gave Vargas notice that he had 30 days to submit a brief or letter raising any grounds of appeal, contentions or arguments he wanted us to consider. We have not received a response.

We have examined the record and are satisfied appellate counsel for Vargas has complied with his responsibilities and there are no arguable issues. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

## **DISPOSITION**

The order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.