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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

GERALD LEVON JEFFERY, JR.,

Defendant and Appellant.

F089192

(Super. Ct. No. CR-20-011591)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Stanislaus County. Carrie M. Stephens, Judge.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Hill, P. J., Levy, J. and Guerra, J.†

† Judge of the Fresno Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

## **INTRODUCTION**

Appellant, Gerald Levon Jeffery, Jr., appeals from the denial of a Penal Code<sup>1</sup> section 1170.18 petition to have his felonies redesignated as misdemeanors. On appeal, appellate counsel filed a brief that summarized the facts with citations to the record, raised no issues, and asked this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Appellant was notified of his right to file a supplement brief but did not do so. Having reviewed the record and finding no arguable issues, we affirm.

## **FACTUAL AND PROCEDURAL HISTORY**

On February 7, 2022, the Stanislaus County District Attorney's Office filed an information in case number CR-20-011591, charging appellant with felony transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)); felony possession of a controlled substance (Health & Saf. Code, § 11378); and misdemeanor driving with a suspended or revoked license (Veh. Code, § 14601.1, subd. (a)). The information further alleged on March 23, 1998, appellant was convicted of voluntary manslaughter, a serious felony within the meaning of section 1192.7, subdivision (c) and section 667, subdivision (d).

On November 18, 2022, a jury found appellant guilty of all counts and found true the prior serious felony strike conviction. On March 2, 2023, the trial court denied appellant's *Romero*<sup>2</sup> motion to dismiss the strike prior. The court sentenced appellant to the middle term of three years for the violation of Health and Safety Code section 11379, subdivision (a), doubled to six years, and two years for the violation of Health and Safety Code section 11378, stayed pursuant to section 654, for a total of six years in prison.

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<sup>1</sup> Further undesignated references to code are to the Penal Code.

<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

In a second case resolved the same day, case number CR-22-007572, appellant pled no contest to felony forgery in violation of section 470, subdivision (d), and admitted the 1998 prior conviction for vehicular manslaughter.<sup>3</sup> Appellant was sentenced to eight months, doubled, for a total of 16 months in prison. Appellant's aggregate sentence was seven years four months.

On December 2, 2024, appellant filed a petition for resentencing pursuant to section 1170.18, to have his felony violations of Health and Safety Code section 11379, subdivision (a) and Health and Safety Code section 11378 redesignated as misdemeanors. The district attorney opposed resentencing, indicating appellant was not convicted of any eligible counts under section 1170.18, and had at least one prior conviction for an offense under section 667, subdivision (e)(2)(C)(iv), and was therefore ineligible for resentencing. On December 5, 2024, the trial court denied appellant's petition without hearing.

### **DISCUSSION**

“[T]he constitutional right to assistance of counsel entitles an indigent defendant to independent review by the Court of Appeal when counsel is unable to identify any arguable issue on appeal. California's procedure for securing this right requires counsel to file a brief summarizing the proceedings and the facts with citations to the record, and requires the appellate court to review the entire record to determine whether there is any arguable issue.” (*People v. Kelly* (2006) 40 Cal.4th 106, 119.)

“[A]n arguable issue on appeal consists of two elements. First, the issue must be one which, in counsel's professional opinion, is meritorious. That is not to say that the

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<sup>3</sup> The record reflects that in case number CR-20-011591, the jury found true appellant suffered a prior conviction for voluntary manslaughter in violation of section 192, subdivision (a). However, in case number CR-22-007572, appellant admitted to a prior “vehicular manslaughter” conviction. No other documentation in the record clarifies this inconsistency.

contention must necessarily achieve success. Rather, it must have a reasonable potential for success. Second, if successful, the issue must be such that, if resolved favorably to the appellant, the result will either be a reversal or a modification of the judgment.” (*People v. Johnson* (1981) 123 Cal.App.3d 106, 109.)

In *People v. Delgadillo* (2022) 14 Cal.5th 216, our Supreme Court held that *Wende* procedures do not apply in appeals from the denial of a section 1172.6 postjudgment petition. (*Delgadillo*, at p. 227.) The *Delgadillo* court found “ ‘[t]here is no unconditional state or federal constitutional right to counsel to pursue collateral relief from a judgement of conviction.’ ” (*Ibid.*) “[T]he Court of Appeal is not barred from conducting its own independent review of the record in any individual section 1172.6 appeal.” (*Id.* at p. 232.) Although *Delgadillo* specifically addressed *Wende* review in the context of postconviction relief pursuant to section 1172.6 (*Delgadillo*, at p. 231, fn. 5), the same principles apply here.

Nonetheless, this court exercises its discretion to conduct an independent review of the record on appeal and is satisfied no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at pp. 441–443.)

“Proposition 47 [amended the California Constitution to] make[] certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091; Cal. Const., art. II, § 10, subd. (a).) Proposition 47’s resentencing provision, section 1170.18, subdivision (a), provides, in pertinent part: “A person who, on November 5, 2014, was serving a sentence for a conviction ... of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction [in] their case to request resentencing in accordance with

[s]ections 11350, 11357, or 11377 of the Health and Safety Code, or [s]ection[s] 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.”

Additionally, “[a] person who has completed [his or her] sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in their case to have the felony conviction or convictions designated as misdemeanors.” (§ 1170.18, subd. (f).)

Appellant was convicted of violating Health and Safety Code sections 11378 and 11379. These convictions do not qualify for resentencing under section 1170.18, subdivision (a).

Appellant was further convicted of violating section 470, subdivision (a), punishable pursuant to section 473. This offense is listed in section 1170.18, subdivision (a). However, appellant “on November 5, 2014, was [not] serving a sentence” for this conviction. (§ 1170.18, subd. (a).) Nor had appellant “completed [his] sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense.” (§ 1170.18, subd. (f).) Therefore, this conviction likewise does not qualify for resentencing under section 1170.18, subdivision (a).

### **DISPOSITION**

The trial court’s December 5, 2024 order denying appellant’s section 1170.18 petition is affirmed.