

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DAVID LAST,

Defendant and Appellant.

A143778

(Lake County  
Super. Ct. No. CR931534)

Michael David Last pleaded no contest to felony possession of methamphetamine and admitted two prior convictions resulting in prison terms, one of which was for attempted murder. He subsequently petitioned for resentencing, pursuant to Penal Code section 1170.18, subdivision (a).<sup>1</sup> The trial court denied Last's petition because his prior conviction for attempted murder makes him ineligible for section 1170.18, subdivision (a), resentencing.

Last's appointed appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) (see *Anders v. California* (1967) 386 U.S. 738 (*Anders*)), in which he raises no issue for appeal and asks this court for an independent review of the record. (See also *People v. Kelly* (2006) 40 Cal.4th 106, 124.) Counsel attests that Last was advised of his right to file a supplemental brief, but he has not exercised that right.

We have examined the entire record in accordance with *Wende*. We agree with counsel that no arguable issue exists on appeal and affirm.

---

<sup>1</sup> Further statutory citations are to the Penal Code, unless indicated otherwise.

## BACKGROUND

On May 14, 2013, Last pleaded no contest to one felony count of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and admitted two prior prison term enhancements (§ 667.5, subd. (b)). One of the prior prison term enhancements was based on a conviction for attempted murder (§§ 187/664). On June 17, 2013, the trial court imposed a state prison sentence of five years, comprised of the upper term of three years for the methamphetamine conviction and consecutive one-year terms for each of the two prior prison term enhancements.

On November 17, 2014, Last filed a petition pursuant to section 1170.18, subdivision (a), requesting that he be “resentenced to a misdemeanor.”<sup>2</sup>

On November 18, 2014, the trial court denied the petition, finding Last ineligible for resentencing under section 1170.18 due to his prior conviction for attempted murder. Section 1170.18, subdivision (i), provides: “The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.” In turn, section 667, subdivision (e)(2)(C)(iv)(IV), specifies “[a]ny homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive” among the offenses listed.

---

<sup>2</sup> “Proposition 47 makes 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.) “Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with [other] statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).) A person who satisfies the criteria in section 1170.18 shall have his or her sentence recalled and be ‘resentenced to a misdemeanor . . . unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.’ (§ 1170.18, subd. (b).)” (*Rivera*, at p. 1092.)

On December 15, 2014, Last timely filed a notice of appeal from the denial of his resentencing petition.

### **DISCUSSION**

Last's appellate counsel represents that the opening brief is filed in accordance with *Wende*. The *Wende* court held: "We conclude that *Anders* requires the court to conduct a review of the entire record whenever appointed counsel submits a brief which raises no specific issues or describes the appeal as frivolous." (*Wende, supra*, 25 Cal.3d at p. 441.)

We have reviewed the record in accordance with our obligations under *Wende* and *Anders*, and we find no arguable issues on appeal.

### **DISPOSITION**

The order of the trial court denying Last's resentencing petition is affirmed.

---

STEWART, J.

We concur.

---

KLINE, P.J.

---

RICHMAN, J.