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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARC L. ARTIERES,

Defendant and Appellant.

A145449

(Marin County
Super. Ct. No. SC143287A)

In this appeal, appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. He certifies he has reviewed the file in the matter and believes there are no appropriate appellate issues to present. He asks us to engage in a review of the record to assess whether this conclusion is correct. We have done so and agree there are no meritorious issues in the matter. Appellate counsel has advised defendant of his conclusions and told him he may file supplemental briefing if appellant believes he has a valid claim for review. Thirty days have passed and no briefing was submitted by defendant. Having found no valid issues on appeal, we affirm the judgment.

STATEMENT OF THE CASE

Defendant was convicted of four felonies after a jury trial in 2007, case No. 143287. They included possession of a controlled substance in violation of Health & Safety Code section 11350, subdivision (a), possession of ammunition by a person

subject to a family law protective order in violation of former Penal Code¹ section 12316, subdivision (b)(1), possession of a controlled substance while armed with a firearm in violation of Health and Safety Code section 11370.1, subdivision (a), and possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a).

In a separate jury trial conducted in 2008 in case No. SC145491, defendant was convicted of rape, in violation of section 261, subdivision (a)(2); unlawful sexual intercourse in violation of section 261.5, subdivision (c); lewd act upon a child in violation of section 288, subdivision (c)(1); and misdemeanor possession of child pornography in violation of section 311.11, subdivision (a).

We affirmed defendant's conviction in case No. SC143287 in a nonpublished opinion filed on October 29, 2008. (*People v. Artieres* (Oct. 29, 2008, A117922) [nonpub. opn].) We also affirmed the judgment in case No. SC145491, but modified the sentence in case No. SC143287 in an opinion filed March 16, 2011. (*People v. Artieres* (Mar. 16, 2011, A123661) [nonpub. opn].) We directed the trial court to prepare an amended abstract of judgment showing an aggregate state prison sentence of 17 years in both cases. The remittitur was filed on July 5, 2011, in appeal No. A123661. On the same date in the Superior Court of the County of Marin, where each case was tried and the convictions sustained, an amended judgment was filed. Defendant was ordered in the amended abstract of judgment to register as a sex offender in case No. SC145491, pursuant to section 290.

On December 29, 2014, defendant filed a petition for resentencing in the instant case, pursuant to section 1170.18 and Proposition 47 (Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014)). He desired his convictions in case No. SC143287 be reduced to misdemeanors. The district attorney opposed the motion based on the contention

¹ Unless otherwise indicated, all statutory references are to the California Penal Code

defendant posed an unreasonable risk to public safety within the meaning of section 1170.18, subdivision (c), and defendant was statutorily ineligible for relief because he had the disqualifying rape conviction under section 1170.18, subdivision (i).

The Superior Court of the County of Marin denied defendant's 1170.18 petition on May 26, 2015. The court found he was statutorily ineligible based on section 1170.18, subdivision (i), which 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 or for an offense requiring registration pursuant to subdivision (c) of Section 290." The court determined that while defendant had sustained the disqualifying rape conviction after he suffered the felony convictions that were the bases for his resentencing motion, the fact of the rape conviction sustained before the petition was filed and heard was disqualifying. The court held "the intent behind the legislation, and the language of the statute make it clear that the legislature did not intend to permit reduction to persons convicted of a disqualifying offense at any time."

DISCUSSION

Defendant filed his notice of appeal on June 15, 2015 and it is timely. An order denying his petition for recall of a sentence based on Proposition 47 and section 1170.18 is an appealable order under section 1237, subdivision (b).

We have reviewed the relevant statutes involved in this matter and the transcript of the proceedings below. We agree with the trial court that defendant's conviction of rape, and the registration consequences the conviction requires pursuant to section 290, preclude his requested relief under Proposition 47 for drug and weapons convictions suffered a year prior to the sex offense convictions.

DISPOSITION

The judgment is affirmed.

DONDERO, J.

We concur:

HUMES, P.J.

MARGULIES, J.

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