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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL L. STEVENS,

Defendant and Appellant.

A145951

(Solano County
Super. Ct. No. C24524)

Defendant Michael L. Stevens appeals from a superior court order denying his “petition for relief from judgment.” Defendant’s court-appointed counsel has filed a brief that does not raise any legal issues. He requests this court independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Defendant was informed of his right to file a supplemental brief and has not done so. Upon our independent review of the record pursuant to *Wende*, we conclude there are no arguable appellate issues for our consideration and affirm the trial court’s order.

BACKGROUND

The record contains a February 2015 Solano County Superior Court order which states that in 1989 defendant was convicted of assault with a firearm in violation of Penal Code section 245, subdivision (a)(2) and sentenced to two years in prison.¹

¹ The court’s order denied defendant’s January 2015 petition for writ of error *coram nobis*. Defendant’s counsel states that defendant previously appealed this order. That appeal was dismissed by this court in June 2015. Because the earlier petition and order are not referenced in the petition or order that are the subject of the present appeal, we do not discuss these prior filings further.

In May 2015, defendant, appearing in propria persona, filed in Solano County Superior Court a “petition for relief from judgment” in case number C24524. He requested that the court correct a mistake that resulted in a judgment that he contended incorrectly reflected the court’s intentions.

Defendant stated in his petition that he was convicted in May 1989 after jury trial of a violation of “Penal Code section 245a.”² However, “[a]t sentencing the trial court re-evaluated the evidence and the jury non finding related to great bodily injury, collectively with the mitigating facts heav[i]ly outweighing [*sic*] all the other circumstances. The trial judge in open court and on the record modified the verdict to reflect that petitioner was in fact guilty of violation of [Penal Code section] 240.^[3] In addition [the] trial court found not true Penal Code [section] 12022 for personally [illegible] a firearm in the commission of a crime.” Defendant asked the court to modify or void his conviction for a violation of Penal Code section 240 “and/or grant leave to file an out of time appeal.”

On May 28, 2015, the superior court filed an order denying defendant’s petition. It stated, “Petitioner fails to show that he is entitled to any relief. Petitioner does not provide any evidence supporting his claim that the trial court re-evaluated the evidence and modified the jury’s verdict to reflect that he was guilty of a [Penal Code section] 240 count. This petition is unverified, so the Court need not take as true Petitioner’s assertions. [¶] This petition is hereby denied.”

Defendant filed a timely appeal from this order.

² No such statute exists. As suggested by the February 2015 court order, defendant may have intended to refer to subdivision (a)(2) of Penal Code section 245, which states, “Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.”

³ Penal Code section 240 states: “An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.”

DISCUSSION

Defendant's counsel asserts that defendant appeals from an appealable order denying what in effect was a petition for a writ of *coram nobis*. As this division has explained, "[a] writ of *coram nobis* permits the court which rendered judgment 'to reconsider it and give relief from errors of fact.' [Citations.] The writ will properly issue only when the petitioner can establish three elements: (1) that some fact existed which, without his fault or negligence, was not presented to the court at the trial and which would have prevented the rendition of the judgment; (2) that the new evidence does not go to the merits of the issues of fact determined at trial; and (3) that he did not know nor could he have, with due diligence, discovered the facts upon which he relies any sooner than the point at which he petitions for the writ." (*People v. Soriano* (1987) 194 Cal.App.3d 1470, 1474.)

Even if we construe defendant's appeal as from an appealable order denying a petition for writ of *coram nobis*, it is plain from *People v. Soriano* that defendant had the burden below of establishing he qualified for the relief he requested. As the superior court indicated in its order, defendant's petition was not verified. Furthermore, it was not accompanied by any declaration or documents, and did not contain a reference to any of the court's records. Therefore, defendant did not in any way meet his burden and the court properly denied his petition on this ground. Further, upon our own independent review of the record, we see no reason to disagree with the court's decision. We conclude based on our independent review pursuant to *Wende* that there are no arguable appellate issues for our consideration.

DISPOSITION

The order appealed from is affirmed.

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.