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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

PRIEST ROGELIO MARTINEZ,

Defendant and Appellant.

A146429

(Lake County
Super. Ct. No. CR914276B)

Defendant Priest Rogelio Martinez appeals an order denying his motion for reconsideration of his sentence. His counsel has filed an opening brief raising no issues and asking this court for an independent review of the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant has been informed of his right to personally file a supplemental brief, but he has not done so.

We are familiar with the background of this case through our review of defendant's appeal of the underlying judgment. (*People v. Martinez* (Mar. 15, 2013, A137183) [nonpub. opn.] (*Martinez I*).)¹ As we explained in *Martinez I*, defendant pled no contest to kidnapping (Pen. Code,² § 207) and second degree robbery (§§ 211, 212.5). On September 26, 2012, pursuant to the terms of defendant's plea bargain, the trial court sentenced him to seven years in prison, calculated as the five-year midterm for kidnapping (§§ 207, subd. (a), 208, subd. (a)), a consecutive one-year term for robbery

¹ We take judicial notice of the record in *Martinez I*.

² All undesignated statutory references are to the Penal Code.

(§§ 211, 213, subd. (a)(2)), and one year for a prior prison term (§ 667.5, subd. (b)). In *Martinez I*, we affirmed the judgment.

On August 10, 2015, defendant, acting in propria persona, filed a motion for recall of his sentence and resentencing pursuant to section 1170, subdivision (d) and Proposition 47. The trial court denied the motion on the ground the time to reconsider defendant's sentence had expired.

Section 1170, subdivision (d)(1), authorizes a trial court, "within 120 days of the date of [a defendant's] commitment on its own motion" to recall a sentence and commitment. Defendant's motion fell outside that time frame.

In November 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) "Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. . . . Proposition 47 (1) added chapter 33 to the Government Code ([Gov. Code,] § 7599 et seq.), (2) added sections 459.5 [shoplifting], 490.2 [petty theft], and 1170.18 to the Penal Code, and (3) amended Penal Code sections 473 [forgery], 476a [checks with insufficient funds], 496 [receiving stolen property], and 666 [petty theft with a prior] and Health and Safety Code sections 11350 [possession of controlled substance], 11357 [possession of cannabis], and 11377 [possession of controlled substance]. (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop 47, §§ 4-14, pp. 70–74.)" (*Rivera, supra*, at p. 1091.) Proposition 47 authorizes a defendant who would have been guilty of a misdemeanor under its provisions to petition the trial court for resentencing within three years of the effective date of Proposition 47. (§ 1170.18, subds. (a), (j).) Defendant's crimes are not among those specified in Proposition 47, and he is accordingly not eligible for resentencing under its provisions.

There are no meritorious issues to be argued.

DISPOSITION

The August 24, 2015 order denying reconsideration of defendant's sentence is affirmed.

Rivera, J.

We concur:

Reardon, Acting P.J.

Streeter, J.