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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES CLAYTON HOWE,

Defendant and Appellant.

2d Crim. No. B248142
(Super. Ct. No. F281349)
(San Luis Obispo County)

James Clayton Howe appeals from the order denying his petition to recall his 25 year-to-life sentence pursuant to the procedures set forth under Penal Code¹ section 1170.126, added by Proposition 36, the Three Strikes Reform Act of 2012.

We appointed counsel to represent appellant in this appeal. After counsel's examination of the record, he filed an opening brief in which no issues were raised.

We advised appellant that he had 30 days within which to personally submit any contentions or issues he wished us to consider. Appellant filed a supplemental letter brief which seeks a more favorable sentence.

In 1999, appellant was convicted of assault with a deadly weapon or by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)) and resisting an executive officer (§ 69). The trial court found true allegations of four prior “strikes”

¹ All statutory references are to the Penal Code unless otherwise stated.

under the Three Strikes law, and sentenced him to two concurrent prison terms of 25 years to life. (On our own motion, we take judicial notice of *People v. Howe* (March 28, 2001, B139592 [nonpub. opn.]) pursuant to Evidence Code sections 459, subdivision (a) and 452, subdivision (d).)

On November 21, 2012, appellant filed a petition to recall his sentence pursuant to section 1170.126. The trial court denied his petition after hearing on February 28, 2013. In 1979, appellant was convicted of two forcible rapes and oral copulation. In 1989, he was convicted of assault with intent to commit rape and sexual battery. (*Howe, supra*, B139592, at p. 9.) Those offenses make him ineligible for resentencing under section 1170.126, subdivision (e)(3).²

We have read and considered appellant's letter brief, his petition for recall of sentence and other materials from the trial court. We are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 443; *People v. Kelly* (2006) 40 Cal.4th 106, 125 126.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

² See section 1170.12, subdivision (c)(2)(C)(iv).

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

Richard B. Lennon, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.