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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVIN MAIDEN,

Defendant and Appellant.

B251777

(Los Angeles County  
Super. Ct. No. KA054630)

APPEAL from a judgment of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

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

No appearance on behalf of Plaintiff and Respondent.

## I. INTRODUCTION

Defendant, Alvin Maiden, appeals from the September 16, 2013 order denying his motion for recall of sentence pursuant to Penal Code<sup>1</sup> section 1170.126. On May 7, 2002, a jury convicted defendant of corporal injury to a cohabitant and assault by means of force and found he inflicted great bodily injury as to both counts. (§§ 245, subd. (a)(1), 273.5, subd. (a), 12022.7, subd. (e)(1).) Defendant had sustained two prior serious convictions. On August 29, 2002, defendant was sentenced to 35 years to life pursuant to sections 667, subdivisions (a)(1) and (e)(2) 1170.12, subdivision (c)(2). We affirm.

## II. DISCUSSION

We previously affirmed defendant's May 7, 2002 convictions. (*People v. Maiden* (Nov. 17, 2003, B161814) [nonpub. opn.].) We need not repeat the factual background here in detail. Suffice to note, defendant struck his girlfriend, Cynthia McClain, in the face. (*People v. Maiden, supra*, B161814.) We appointed counsel to represent defendant on appeal. After examination of the record, appointed appellate counsel filed an "Opening Brief" in which no issues were raised. Instead, appointed appellate counsel requested this court to independently review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 at page 441. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284.) On December 11, 2013, we advised defendant that he had 30 days within which to personally submit any contentions or arguments he wishes us to consider. No response has been received. We have examined the entire record and are satisfied appointed appellate counsel has fully complied with his responsibilities.

The argument defendant raised in the trial court is frivolous. Defendant is ineligible for resentencing because the jury found he inflicted great bodily injury as to both counts. (§ 1170.126, subd. (e)(1); see *In re Martinez* (2014) 223 Cal.App.4th 610,

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<sup>1</sup> Future section references are to the Penal Code.

617.) No argument exists favorable to defendant on appeal. (*People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

### III. DISPOSITION

The order denying defendant's recall petition is affirmed.

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TURNER, P. J.

We concur:

MOSK, J.

MINK, J.\*

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\* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.