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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SHERMAN L. HIGGINS, III,

Defendant and Appellant.

B254845

(Los Angeles County
Super. Ct. No. KA090166)

THE COURT:*

Defendant Sherman L. Higgins III appeals from the order denying his motion for sentence reduction pursuant to Penal Code section 1170.126, subdivision (e).¹ Defendant is currently serving a sentence of 35 years to life, imposed in 2010.

We appointed counsel to represent defendant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment he had been unable to find any arguable issues. On May 2, 2014, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. No response had been received to date.

* BOREN, P.J., ASHMANN-GERST, CHAVEZ, J.

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

Section 1170.126 provides that defendants may file a petition for recall of sentence only when the felony that triggered their three-strikes sentence (the current felony) was not defined as a violent or serious felony in section 667.5, subdivision (c) or section 1192.7, subdivision (c), respectively. (§ 1170.126, subd. (b).) As noted in our unpublished opinion in case No. B230156, defendant was convicted of conspiracy to commit first degree burglary in violation of section 182, subdivision (a)(1). This crime is included in the list of serious felonies contained in section 1192.7, subdivision (c) (§ 1192.7, subd. (c)(18), (42)) and was included on the date defendant committed the current offense. (Stats. 2006, ch. 337, § 37.) Therefore, defendant was not eligible to file a petition for recall of sentence and resentencing under section 1170.126.

We have examined the entire record, and we are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order appealed from is affirmed.

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