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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT GAETA,

Defendant and Appellant.

B260838

(Los Angeles County  
Super. Ct. No. GA033532)

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

California Appellate Project, Jonathan B. Steiner, Executive Director, and  
Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

In 1998, defendant Robert Gaeta was convicted of first degree burglary (Pen. Code, § 459)<sup>1</sup> and was found to have two prior strike convictions (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). He was sentenced to an indeterminate term of 30 years to life in state prison. In September 2013, he filed a pro se petition to recall his sentence under section 1170.126. The superior court appointed counsel to represent him, and in January 2014 counsel filed a petition for recall on defendant's behalf. Later in January 2014, the court denied the petition with prejudice, on the ground that defendant's current conviction of first degree burglary is a serious felony under section 1192.7, subdivision (c)(18), making defendant ineligible for resentencing under section 1170.126, subdivision (e)(2).

Rather than appealing that decision, defendant filed a new pro se petition to recall his sentence in November 2014. The trial court dismissed the petition, noting that defendant's remedy following the denial of his earlier petition was to appeal (*Teal v. Superior Court* (2014) 60 Cal.4th 595), and that in any event the denial of the earlier petition was correct on the merits. Defendant filed a notice of appeal from the court's order of dismissal, resulting in the instant proceeding in this court.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, counsel on appeal filed an opening brief requesting that we independently review the record to determine if any error was committed. Counsel informed defendant of his right to file a supplemental brief. None has been filed.

We have independently reviewed the record, and conclude that no error was committed. Therefore, we affirm the judgment.

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<sup>1</sup> Further unspecified statutory references are to the Penal Code.

**DISPOSITION**

The judgment is affirmed.

WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.