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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY M. KNOX,

Defendant and Appellant.

C073217

(Super. Ct. No. 03F06958)

Defendant Anthony M. Knox is serving a term of 26 years to life for lewd or lascivious act on a 14-year-old minor who is at least 10 years younger than defendant (Pen. Code, § 288, subd. (c)(1)),<sup>1</sup> unlawful sexual intercourse (§ 261.5, subd. (d)), aiding and abetting a false impersonation (§ 529, par. 3), misdemeanor resisting an officer (§ 148, subd. (a)(1)) with three prior strikes (§§ 667, subds. (b)-(i), 1170.12), and one

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<sup>1</sup> Undesignated statutory references are to the Penal Code in effect at the time of the charged offense.

prior prison term (§ 667.5, subd. (b)). He appeals the trial court's decision denying his petition for resentencing under section 1170.126.

We affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

The trial court found defendant ineligible for resentencing because he had two prior convictions for attempted murder and he impregnated the victim when committing the unlawful sexual intercourse offense in the current case, and thus personally inflicted great bodily injury on the victim, making the unlawful sexual intercourse a serious felony. The trial court based the finding that the victim was impregnated by defendant upon the facts stated in the opinion of this court affirming the present convictions.

Defendant appeals, contending the trial court could not find he personally inflicted great bodily injury based on facts in this court's opinion in his appeal, there is insufficient evidence to support a finding of great bodily injury, he was not provided an opportunity to contest the court's finding of great bodily injury, and he is entitled to a jury trial on the great bodily injury issue.

We affirm.

### **DISCUSSION**

Section 1170.126 permits a defendant serving a three strikes sentence for a crime that is not a serious or violent felony to petition the trial court for resentencing under the two strikes provisions. (§ 1170.126, subd. (a).) Among the factors disqualifying a defendant from resentencing are one or more prior convictions for certain offenses including attempted murder. (§§ 1170.126, subd. (e)(3), 1170.12, subd. (c)(2)(C)(iv)(IV), 667, subd. (e)(2)(C)(iv)(IV).) Also a defendant who is convicted of a serious felony offense in the current case is not eligible for resentencing. (§ 1170.126, subd. (e)(1).) Any felony in which the defendant personally inflicts great bodily injury is a serious felony offense. (§ 1192.7, subd. (c)(8).)

Defendant does not contest the trial court’s finding that he is ineligible for resentencing based on the prior convictions for attempted murder. He raises the challenges to the great bodily injury finding “to avoid forfeiture of the issue under the rule that prohibits habeas relief on issues that could have been raised on appeal.”

An appellate court generally will not address an issue unnecessary to the resolution of the appeal. (*Young v. Three for One Oil Royalties* (1934) 1 Cal.2d 639, 647-648; *Oxbow Carbon & Minerals, LLC v. Dept. of Industrial Relations* (2011) 194 Cal.App.4th 538, 552, fn. 11.) Since defendant properly concedes that his prior convictions for attempted murder render him ineligible for resentencing, resolution of his claims in his favor would not lead to a different result. Since addressing defendant’s claims would be nothing more than an advisory opinion, i.e., “dictum pure and simple,” (*Young*, at p. 648) we decline to reach them.

**DISPOSITION**

The judgment is affirmed.

\_\_\_\_\_ MURRAY \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

\_\_\_\_\_ HULL \_\_\_\_\_, J.