

NOT TO BE PUBLISHED

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

THE PEOPLE,

Plaintiff and Respondent,

v.

ORLANDO BLACKWELL,

Defendant and Appellant.

C074021

(Super. Ct. Nos. 97F06705,
13HC00133)

Defendant Orlando Blackwell appeals from an order denying a motion to recall his so-called “three strikes” sentence of 50 years to life, brought pursuant to the provisions of the Three Strikes Reform Act of 2012 (the Act), codified at Penal Code section 1170.126.¹ (See *Teal v. Superior Court* (2014) 60 Cal.4th 595 (*Teal*).) Defendant also purports to appeal from an order denying a petition for writ of habeas corpus.

¹ Undesignated statutory references are to the Penal Code.

Defendant's motion to recall his sentence and for resentencing was denied upon determination that he was not eligible for relief under the Act because the commitment offenses were for robbery. (See §§ 667.5, subd. (c)(9), 1170.126, subd. (e)(1), 1192.7, subd. (c)(19).)

Counsel was appointed to represent defendant on appeal from that order. Counsel filed an opening brief setting forth the facts of the case and requesting this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel advised defendant of his right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant timely filed a supplemental brief by which he appears to seek to present challenges to the validity and constitutionality of the prior convictions. However, “ ‘ “[i]t is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.” ’ [Citations.]” (*People v. Mena* (2012) 54 Cal.4th 146, 152.) Appeal of the order denying relief under the Act is authorized by subdivision (b) of section 1237, as an order made after judgment, affecting the substantial rights of defendant. (*Teal, supra*, 60 Cal.4th at p. 601.) However, that statutorily conferred appellate jurisdiction is limited to review of the decision to deny relief under the Act. To convert that limited grant of jurisdiction to effectuate appellate review of the prior convictions would in substance allow a belated motion to vacate those judgments, thereby violating the proscription on so “ ‘bypass[ing] or duplicat[ing] appeal from the judgment itself.’ [Citation.]” (*People v. Totari* (2002) 28 Cal.4th 876, 882.) Defendant's challenges to prior convictions are not cognizable on this appeal of the order denying relief under the Act.

Defendant has also appealed from an order denying his petition for writ of habeas corpus. No appeal may be taken from such an order, and the appeal therefrom must be

dismissed for want of appellate jurisdiction.² (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; *In re Crow* (1971) 4 Cal.3d 613, 621, fn. 8.)

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.³

DISPOSITION

The judgment (order) denying the motion to recall sentence and for resentencing is affirmed. The appeal from the order denying the petition for writ of habeas corpus is dismissed.

RAYE, P. J.

We concur:

BLEASE, J.

HULL, J.

² Defendant entitled the petition to be for writ of error *coram nobis*. The trial court liberally construed the pleading to seek relief by petition for writ of habeas corpus because, upon affirmance of the commitment judgment, the trial court was without jurisdiction to consider a petition for writ of error *coram nobis*. (§ 1265; see *People v. Stanworth* (1974) 11 Cal.3d 588, 594-595, fn. 5.) Defendant raises no challenge to the trial court’s construction of his petition.

³ The materials that are the subject of defendant’s request for judicial notice, filed October 7, 2013, are not relevant to this appeal and the request is therefore denied.