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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sierra)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN VENTURA ONTIVEROS,

Defendant and Appellant.

C078567

(Super. Ct. No. CR02964X)

Appointed counsel for defendant Martin Ventura Ontiveros has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment. We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

In October 2012, a jury found defendant “guilty of driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)) and driving while having 0.08 percent or more alcohol in his blood ([Veh. Code,] § 23152, subd. (b)). The jury found true an allegation that, within the previous 10 years, defendant had a prior felony conviction of driving under the influence (DUI) with injury. ([Veh. Code,] §§ 23153, 23550.5, subd. (a)(2).) The jury also found true an allegation that, within the previous 10 years, defendant had three prior DUI convictions. ([Veh. Code,] §§ 23152, 23153, 23550, subd. (a).) The jury found not true an allegation that defendant refused a peace officer’s request to submit to and complete a chemical test. ([Veh. Code,] § 23577.) Defendant admitted allegations that he had a prior robbery conviction (former Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and had served a prior prison term (Pen. Code, § 667.5, subd. (a)). [¶] Defendant was sentenced to state prison for seven years, consisting of twice the upper term of three years for the DUI plus one year for the prior prison term.” (*People v. Ontiveros* (Sept. 12, 2013, C072538) [nonpub. opn.], fn. omitted.) On appeal, this court modified the judgment by striking defendant’s convictions on two counts. As modified, we affirmed the judgment.

On November 24, 2014, defendant filed a petition to recall his sentence and resentence him under Proposition 47. (Pen. Code, § 1170.18.) The People responded that defendant’s convictions for driving under the influence with priors were for offenses not included within the terms of Proposition 47. Following a hearing, the trial court denied defendant’s petition, finding him ineligible for relief because none of his convictions qualified for recall and resentencing under Proposition 47.

Counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. Defendant filed a supplemental brief making claims as to the validity of the underlying

conviction. He claims ineffective assistance of counsel and perjury by the arresting law enforcement officer. These claims go to the validity of defendant's underlying convictions. This court has reviewed and affirmed those convictions. That judgment is final, and claims as to their validity are not properly before us. (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 1, p. 583; § 6, pp. 590-591; § 10, p. 593.)

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

DISPOSITION

The judgment is affirmed.

NICHOLSON, Acting P. J.

We concur:

MAURO, J.

RENNER, J.