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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

HARVEY EUGENE LARSON,

Defendant and Appellant.

D063899

(Super. Ct. No. SCE195230)

APPEAL from a judgment and order of the Superior Court of San Diego County, Louis R. Hanoian and David J. Danielson, Judges. Affirmed.

Defendant Harvey Eugene Larson was convicted of one count of resisting an executive officer (Pen. Code,¹ § 69; count 1) and one count of exhibiting a deadly weapon to a police officer to resist arrest (§ 417.8; count 2). It was also found that Larson personally used a deadly or dangerous weapon in the commission of count 1 (§ 12022, subd. (b)(1)), he had three prison priors (§ 667.5, subd. (b)), one serious felony prior (§ 667, subd. (a)(1)), and three strike priors (§§ 667, subds. (b)-(i), 1170.12).

¹ All further undesignated statutory references are to the Penal Code.

Thereafter, the court declined to strike one of Larson's strike priors. The court sentenced him to a term of 25 years to life, plus nine years, consisting of 25 years to life for count 1, one year for the section 12022, subdivision (b) enhancement, five years for the section 667, subdivision (a)(1) prior, and three years for the section 667.5, subdivision (b) prison priors. The sentence for count 2 was stayed under section 654.

In March 2013 Larson filed a petition for sentence recall under the Three Strikes Law. In April 2013 the court denied the petition, finding the section 1170.126 recall did not apply because his current offense was a serious felony.

Counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *Anders v. California* (1967) 386 U.S. 738 (*Anders*) raising possible, but not arguable, issues. We offered Larson the opportunity to file his own brief on appeal.

Larson responded by filing as a "responsive brief" a petition for writ of habeas corpus with the Superior Court of San Diego County asserting Proposition 36, the Three Strikes Reform Act of 2012, does not apply to nonserious felonies such as exhibiting a screwdriver. He also asserts (1) that error negated the court's use of an out-of-state conviction as a five-year enhancement; (2) use of an out-of state conviction as a strike and enhancement was improper; (3) use of an out-of-state conviction as a third strike was improper; (4) the out-of-state conviction should have been considered a misdemeanor; and (5) the out-of-state conviction does not constitute a serious felony.

Larson thereafter requested leave to amend his supplemental brief, which request we granted. Larson filed as an amended supplemental brief another habeas petition raising the same issues as his original supplemental brief.

FACTUAL BACKGROUND

The record in this matter does not contain a description of the underlying facts constituting the current offenses. However, they are not relevant to this appeal.

DISCUSSION

As we have previously noted, appellate counsel has filed a brief indicating he is unable to identify any argument for reversal and asks this court to review the record for error as mandated by *Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders, supra*, 386 U.S. 738, the brief identifies the following possible, but not arguable, issue:

1. Did the trial court err in concluding Larson did not qualify for recall of sentence and resentencing under section 1170.126?

We have reviewed the entire record in accordance with *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, and Larson's responsive/supplemental briefs, and have not found any reasonably arguable appellate issues. Competent counsel has represented Larson on appeal.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

O'ROURKE, J.