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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN ROGER DAVEY,

Defendant and Appellant.

D065984

(Super. Ct. No. SCD134140)

APPEAL from a judgment of the Superior Court of San Diego County, Kenneth K. So, Judge. Affirmed.

Gary V. Crooks, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Kevin Roger Davey appeals the denial of his motion to recall his sentence under Penal Code section 1170.126. Davey had been convicted in California of committing sexual offenses against minors. He had also been convicted of aggravated sodomy

against a nine-year-old child and aggravated burglaries in other states. In 1998, Davey pleaded guilty to failing to register as a sex offender and was sentenced to 25 years to life.

Appointed appellate counsel filed a brief presenting no argument for reversal, but invited this court to review the record for error in accordance with *People v. Wende* (1979) 25 Cal.3d 436. After having independently reviewed the entire record for error, as required by *Anders v. California* (1967) 386 U.S. 738 and *Wende*, we affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

Davey filed a motion to recall his sentence under Penal Code section 1170.126. At a hearing on April 11, 2014, Davey said he was mentally ill and needed treatment. He was not seeking release into the community but wanted to attend a program designed for violent sexual offenders committed to the state mental health system. Davey's trial counsel acknowledged if Davey qualified as a sexually violent predator, he would not be eligible for a hearing to recall his sentence under section 1170.126.

The People presented evidence concerning Davey's prior criminal offenses and extensive prison disciplinary record, his admissions that he wanted to have sexual relations with boys, and a psychologist's report stating that he obviously represents a sexual threat to the community were he not incarcerated.

The trial court found that resentencing Davey would pose an unreasonable public safety risk and denied his petition.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings in the trial court. Counsel has presented no argument for reversal, and invited this court to review the record for error in accordance with *People v. Wende*, *supra*, 25 Cal.3d 436. Pursuant to *Anders v. California*, *supra*, 386 U.S. 738, counsel identified the following as a possible, but not arguable, issue: "Did the trial court abuse its discretion in rendering judgment?"

A review of the record pursuant to *Wende* and *Anders*, including the issue suggested by counsel, has disclosed no reasonably arguable appellate issue. Davey has been represented by competent counsel on this appeal. We granted Davey permission to file a brief on his own behalf. He has not responded.

## DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.