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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD MONROE HARRIS,

Defendant and Appellant.

D066166

(Super. Ct. No. FV1901066)

APPEAL from orders of the Superior Court of San Bernardino, Michael A. Smith, Judge. Affirmed with directions.

Leslie A. Rose, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In December 2009, a jury found Richard Monroe Harris guilty of assault with a deadly weapon (Pen. Code,<sup>1</sup> § 245, subd. (a)(1), a serious felony (§§ 1192.7,

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<sup>1</sup> All further statutory references are to the Penal Code.

subd. (c)(31), 1170.126, subd. (e)(1)). In a bifurcated proceeding, the court found true allegations of a serious felony prior conviction (§ 667, subd. (a)(1)), four prior prison terms (§ 667.5, subd. (b)) and three prior strike convictions (§ 667, subds. (b)-(i)). In 2010, the court sentenced Harris to prison for 25 years to life plus eight years: 25 years to life, with the possibility of parole, for assault with a deadly weapon; five years for the serious felony prior; and one year each for three of the prison priors.<sup>2</sup> In 2011, the court dismissed one of the strikes. In 2014, Harris filed petitions for resentencing (§ 1170.126). The court denied the petitions. Harris appeals. We affirm.

## BACKGROUND

In May 2009, Harris assaulted the victim with a knife, stabbing him in the arm, the thigh, the back and twice in the forehead. With the second stab in the forehead, the knife's blade penetrated the victim's skull, separated from the handle and remained embedded in the victim's forehead until later removed. The stab in the back punctured the victim's lung.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to

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<sup>2</sup> The court stayed execution of a one-year sentence for a prison prior in case No. SCE278028. "Once the prior prison term is found true within the meaning of section 667.5[, subdivision ](b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken." (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.) Because the conviction in case No. SCE278028 also gave rise to the serious felony prior for which Harris received a five-year sentence, this prison prior should have been stricken. (*People v. Jones* (1993) 5 Cal.4th 1142, 1144-1145, 1150, 1153.) We direct the trial court to amend the abstract of judgment accordingly.

review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*) counsel mentions as possible but not arguable issues (1) whether the denial of the section 1170.126 petition is an appealable order and (2) whether the court erred by denying the petition.

We granted Harris permission to file a brief on his own behalf. He has not responded. A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436, and *Anders, supra*, 386 U.S. 738, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Harris has been competently represented by counsel on this appeal.

#### DISPOSITION

The orders are affirmed. The trial court is directed to (1) amend the abstract of judgment to reflect a stricken, rather a stayed, prison prior in case No. SCE278028; and (2) forward the amended abstract of judgment to the Department of Corrections and Rehabilitation.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.