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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BARRY SPENCER,

Defendant and Appellant.

D067318

(Super. Ct. No. SCN203697)

APPEAL from an order of the Superior Court of San Diego County, David J.

Danielsen, Judge. Affirmed.

Lynelle K. Hee, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

In this criminal case, appointed counsel filed a brief presenting no argument for reversal but inviting the court to review the record for error in accordance with *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), specifically requesting we examine the denial of

defendant's request to recall his sentence pursuant to Penal Code section 1170.126.¹ We gave defendant Barry Spencer an opportunity to file a brief on his own behalf, and he has done so. After independently reviewing the entire record for error, as required by *Anders v. California* (1967) 386 U.S. 738 (*Anders*) and *Wende*, we affirm.

FACTUAL BACKGROUND

Defendant was convicted of one count of robbery in violation of section 211. It was also found he suffered two strike priors. (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d).) On April 28, 2006, the court sentenced him to a total of 32 years to life in state prison: 25 years to life for the robbery conviction, two 1-year enhancements for the prison priors (§ 667.5, subd. (b)), and one 5-year enhancement for a prior serious felony conviction (§ 667, subd. (a)(1)).

On November 17, 2014, defendant filed a petition for recall of his sentence pursuant to section 1170.126. The court denied the petition, finding defendant ineligible because his commitment offense is a violent felony.

Defendant filed a timely notice of appeal. .

STATEMENT OF FACTS

Defendant states the facts of this case are not relevant to the appeal. We agree.

DISCUSSION

As we have indicated, appointed counsel has filed a brief summarizing the trial proceedings. He has not presented an argument for reversal, but requests we review the record for error in accordance with *Wende, supra*, 25 Cal.3d 436. In particular he

¹ All further statutory references are to the Penal Code.

requests we examine the court's denial of the petition to recall his sentence. We have done so. We conclude the trial court correctly denied the petition to recall defendant's sentence. Defendant's conviction is for robbery, which is classified as a violent crime as defined in section 667.5, subdivision (c)(9), making him ineligible for recall of sentence.

We have also examined the entire record, including the sentencing hearing. We see no error in the questions presented and resolved by counsel and the court.

Finally, we note defendant has filed his own brief wherein he requests this court exercise its discretion to alter his sentence. Of course we are not at liberty to apply our independent discretion to reexamine and change defendant's sentence. However we wish to let counsel and defendant know we have read and considered defendant's thoughtful hand-printed brief.

A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436, and *Anders, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Defendant has been represented by competent counsel on this appeal.

DISPOSITION

The order is affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.