

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CECIL DEVON EVERETT,

Defendant and Appellant.

E058184

(Super.Ct.No. FVI016845)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Smith, Judge. (Retired judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

On April 7, 2003, a felony complaint charged defendant and appellant Cecil Devon Everett with second degree commercial burglary under Penal Code<sup>1</sup> section 459 (count 1); and petty theft with a prior under sections 666 and 484, subdivision (a) (count 2). The complaint also alleged that defendant suffered five prior serious or violent felony convictions under sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i). The complaint further alleged that defendant served four prior prison terms under section 667.5, subdivision (b).

On June 24, 2003, defendant was convicted of count 2, petty theft with a prior, in a court trial. The court also found the four prior prison term allegations under section 667.5, subdivision (b), to be true. On July 29, 2005,<sup>2</sup> the trial court denied defendant's motion for new trial, a motion to reduce the charge to a misdemeanor, and a *Romero*<sup>3</sup> motion. Defendant was sentenced to a total indeterminate term of 29 years to life in state prison.

On November 19, 2012, defendant filed a petition requesting resentencing under section 1170.126 (Proposition 36). On February 15, 2013, the trial court found that defendant had suffered a prior conviction for attempted murder and was statutorily ineligible for resentencing under section 1170.126.

---

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

<sup>2</sup> The record is not clear as to why there was a two-year lapse in time between the court trial and the sentencing date.

<sup>3</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

On February 27, 2013, defendant filed a timely notice of appeal from the court's denial of his motion under section 1170.126.

### **STATEMENT OF FACTS**

The facts of the underlying offenses are not relevant to this appeal. In sum, following a court trial, the trial court found defendant guilty of count 2, petty theft with a prior.

### **ANALYSIS**

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. On July 16, 2013, defendant filed a two-page handwritten brief. In his brief, it appears that defendant is (1) challenging the trial court's finding of his four prior prison term allegations true under section 667.5, subdivision (b); and (2) arguing that the trial court abused its discretion in denying his *Romero* motion due to remoteness.

Notwithstanding defendant's assertions, this appeal is from the trial court's denial of his motion for modification of sentence. This is not an appeal from the underlying conviction, the true findings, or the denial of his *Romero* motion or any other motion, which were made in 2003 and 2005.

Instead, this appeal is from the trial court's denial of defendant's petition requesting resentencing under section 1170.126. At the hearing on the motion, the court correctly found that defendant was statutorily ineligible for resentencing because of his prior conviction for attempted murder.

We have conducted an independent review of the record and find no arguable issues.

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

MILLER  
J.