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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY BERNARD PARKER,

Defendant and Appellant.

E058489

(Super.Ct.No. FWV021333)

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.

Howard C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

STATEMENT OF CASE¹

A felony complaint filed in October 2000 charged defendant and appellant Gary Bernard Parker with one count of second degree robbery. (Pen. Code, § 211.) The complaint also alleged that defendant had suffered six prior serious or violent felony convictions. (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i).)

The record does not include the information, verdicts, or minute orders from the jury trial. However, the abstract of judgment filed April 26, 2001, shows defendant was convicted by jury trial of second degree robbery (Pen. Code, § 211, count 1) and grand theft of property (Pen. Code, § 487, subd. (a), count 2).

The April 16, 2001 minute order shows defendant's motion for new trial was denied. He was sentenced pursuant to Penal Code section 1170.12, subdivision (c)(2), and section 667, subdivision (e)(2), for a total indeterminate term of 25 years to life in state prison.

Defendant appealed, and we reversed the grand theft count as being a lesser included offense of the robbery. (See *People v. Parker* (Jan. 15, 2002, E029353) [nonpub. opn.].) On July 11, 2002, on the court's own motion, count 2 (grand theft) was dismissed by the trial court. A new abstract of judgment was filed July 24, 2002.

On March 8, 2013, defendant filed a petition for recall of sentence under the Three Strikes Reform Act of 2012. (Pen. Code, § 1170.126.) Finding that defendant was

¹ Because this appeal is from a trial court's denial of a petition to recall a sentence, the underlying facts of the offenses are irrelevant.

ineligible because the current commitment includes robbery (a serious felony), the trial court denied defendant's petition on March 21, 2013.

On April 2, 2013, defendant filed a timely notice of appeal from the trial court's denial of his petition for recall.

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, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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McKINSTER
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.