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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.

STEVIE JERRY SMITH,

Defendant and Appellant.

E059016

(Super.Ct.No. FSB09351)

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.

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

No appearance for Plaintiff and Respondent.

PROCEDURAL HISTORY

On March 12, 1996, a jury convicted defendant and appellant Stevie Jerry Smith of sodomy by force (count 1 – Pen. Code, § 286, subd. (c)),¹ three counts of anal penetration with a foreign object (counts 2-4 – § 289, subd. (a)), and kidnapping for sexual purposes (§§ 207, subd. (a), 208, subd. (d)).² Additionally, allegations defendant committed the sexual offenses with the use of a handgun were found true (§§ 12022.3, subd. (a), 12022.5). Finally, allegations defendant suffered two prior serious felony strike convictions (§ 667, subd. (a)(1)) and four prior prison terms (§ 667.5) were also found true. The court originally sentenced defendant to an aggregate term of 195 years to life; however, on appeal, we reduced defendant’s sentence to 156 years to life by staying imposition of punishment on count 5.³

On December 26, 2012, defendant filed a letter in the superior court seeking resentencing pursuant to section 1170.126. On May 22, 2013, the court denied defendant’s request, finding he was ineligible for resentencing because his commitment offenses were violent sexual crimes perpetrated with a firearm.

Upon defendant’s 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*

¹ All further statutory references are to the Penal Code.

² We take judicial notice of our opinion in case No. E018184, defendant’s appeal from his original conviction and judgment.

³ The abstract of judgment from the resentencing pursuant to our opinion appears to more accurately reflect a sentence of 154 years to life.

v. California (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to conduct an independent review of the 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 independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

RICHLI

J.

CODRINGTON

J.