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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.

PAUL CHRISTOPHER HAMILTON,

Defendant and Appellant.

E062169

(Super.Ct.No. FWV08517)

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.

Paul Christopher Hamilton, in pro. per.; Cindi B. Mishkin, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

STATEMENT OF THE CASE

On November 9, 1995, an information charged defendant and appellant Paul Christopher Hamilton with violating Penal Code¹ section 211 (robbery) and section 215, subdivision (a) (carjacking). The information alleged that the crimes were committed with the use of a dangerous weapon—a BB gun under section 12022, subdivision (b). The information also alleged that defendant had suffered three strike priors under sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i), from a Florida conviction suffered on April 24, 1984.

On January 11, 1996, a jury found defendant guilty of the charged crimes and found two of the strike priors to be true.

On February 7, 1996, following the recommendation of the probation department, the trial court sentenced defendant to 27 years to life for the carjacking conviction, and a consecutive 25 years to life for the robbery conviction, for a total term of 52 years to life.

Defendant appealed. On May 23, 1997, in case No. E017839, we reversed the sentence and remanded the case to the trial court for resentencing. On September 17, 1997, the trial court denied defendant's motion to dismiss the strike priors under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, ordered defendant to serve a 27-year-to-life sentence for the carjacking count (the upper term of nine years, tripled under the "Three Strikes" law), and stayed the sentence for the robbery count under section 654.

¹ All statutory references are to the Penal Code unless otherwise specified.

Almost 17 years later, on July 24, 2014, defendant filed a petition for writ of habeas corpus. In the petition, defendant asserted that his two prior Florida strike convictions constituted only one strike prior under *People v. Vargas* (2014) 59 Cal.4th 635 (*Vargas*). On August 7, 2014, the trial court deemed the petition for writ of habeas corpus to be a petition for recall of sentence under the Three Strikes Reform Act of 2012, section 1170.126. On August 25, 2014, the court denied the petition without prejudice.

On September 8, 2014, defendant requested that the trial court reconsider its ruling.

On October 17, 2014, defendant filed a notice of appeal from the August 25, 2014 order.

On October 30, 2014, the trial court reconsidered the section 1170.126 petition. It found defendant ineligible for relief under the Three Strikes Reform Act and found that defendant still suffered two three strike prior convictions. On November 5, 2014, defense counsel filed a notice of appeal from this ruling. On November 7, 2014, defendant also filed a notice of appeal from this ruling.

On December 12, 2014, we dismissed the appeal filed on October 17, 2014, and directed that the instant appeal “proceed” as to appeals filed November 5 and 7, 2014, from the October 30, 2014, order.²

² On March 10, 2015, we granted defendant’s request for judicial notice, and took judicial notice of the probation report received June 24, 1996, in case No. E017839, and pages 475 through 501 of volume 2 of the reporter’s transcript filed June 24, 1996.

II³

STATEMENT OF FACTS

On January 11, 1996, the jury found true that on May 14, 1984, defendant pled guilty to two felony robbery convictions; it resulted in one prison term.

III

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 May 1, 2015, defendant filed an eight-page typewritten brief with attached exhibits. In his brief, defendant appears to be arguing that he is entitled to resentencing pursuant to section 1170.126 under *Vargas, supra*, 59 Cal.4th 635, because “the prior convictions nevertheless subsequently found true, both were pleaded to on the same date May 14th, 1984, resulting in just one prison term. . . .”

Notwithstanding, we agree with the trial court and find that *Vargas, supra*, 59 Cal.4th 635, is inapplicable. The California Supreme Court held in *Vargas* that two prior convictions (robbery and carjacking) were based on the same act, committed at the same

³ The facts of the underlying case are not relevant because the only issue on appeal relates to defendant’s sentence.

We have examined the entire record and are satisfied that no arguable issues exist, and that defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*People v. Kelly* (2006) 40 Cal.4th 106.)

IV

DISPOSITION

The trial court properly denied defendant's petition for resentencing. The trial court's order is affirmed.

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McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.