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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.

MICHAEL JOSEPH BRYANT,

Defendant and Appellant.

E063820

(Super.Ct.No. SWF1400675)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Michael Joseph Bryant, filed a petition for resentencing pursuant to Penal Code section 1170.18,¹ which the court denied. After defendant filed a

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

notice of appeal, 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 and identifying one potentially arguable issue: whether the court erred in determining defendant was ineligible for resentencing pursuant to section 1170.18. We affirm.

I. PROCEDURAL BACKGROUND

On February 11, 2014, the People charged defendant by felony complaint with commercial burglary (count 1; § 459), theft of the personal property of another having previously been convicted of at least three prior theft offenses² (count 2; § 484, subd. (a)), and unlawfully obtaining food and accommodation without payment (count 3; § 573, subd. (a)). The People additionally alleged defendant had suffered four prior prison terms. (§ 667.5, subd. (b).)

On February 24, 2014, defendant pled guilty to commercial burglary (count 1; § 459) and admitted having suffered two prior prison terms (§ 667.5, subd. (b)). The court sentenced defendant to the midterm of two years on the count 1 offense and a consecutive one-year term on each of the two prior prison term allegations. The court suspended execution of the concluding year of the sentence pursuant to section 1170, subdivision (h)(5)(A).

² The People alleged defendant had been previously convicted of five theft offenses.

On December 2, 2014, defendant filed a petition for resentencing. On March 13, 2015, the People filed a response in which they contended defendant was ineligible because he had previously been convicted of a sex offense. (§ 314.) At the hearing on the petition on May 22, 2015, defense counsel noted: “I did receive a rap sheet today from the District Attorney’s Office indicating that he was convicted of a [section] 314 [offense].” The court concluded defendant was ineligible for resentencing “because he is a [section] 290 registrant, and his petition to recall is denied.”

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. 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. (§§ 1170.18, subds. (a), (b) [burglary conviction under § 459 not a statutorily enumerated offense entitling a defendant to resentencing], 1170.18, subd. (i) [“The provisions of this section shall not apply to persons who have one or more prior convictions . . . for an offense requiring registration pursuant to subdivision (c) of Section 290.”], 290, subd. (c) [persons convicted of § 314 offense required to register as a sex offender].)

III. DISPOSITION

The judgment is affirmed.

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KING
J.

We concur:

RAMIREZ
P. J.

MILLER
J.