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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 THOMAS ANDERSEN,

Defendant and Appellant.

E065446

(Super.Ct.No. SWF1402503)

OPINION

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

Affirmed.

Jeffrey S. Kross, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

On November 19, 2014, an information charged defendant and appellant Michael Thomas Andersen with assaulting a child under the age of eight with force likely to produce great bodily injury, resulting in the child becoming comatose and suffering

permanent paralysis, under Penal Code¹ section 273a, subdivision (b) (count 1); inflicting unjustifiable physical pain and mental suffering under circumstances likely to produce great bodily injury under section 273a, subdivision (a) (count 2); and inflicting cruel and inhumane corporal punishment resulting in a traumatic condition under section 273d, subdivision (a) (count 3). The information also alleged, as to counts 2 and 3, that defendant personally inflicted great bodily injury under section 12022.7, subdivision (d).

On May 4, 2015, pursuant to a negotiated plea agreement, and after being advised of and waiving his constitutional rights, defendant pled guilty to count 2 (§ 273a, subd. (a)), and admitted the great bodily injury enhancement allegation (§ 12022.7, subd. (d)). Thereafter, the court sentenced defendant to state prison for six years, comprised of the low term of two years on the child abuse charge, plus four years on the great bodily injury enhancement. The court granted the People's motion to dismiss counts 1 and 3, awarded defendant presentence and local conduct credit, and imposed statutory fines, fees and assessments.

Defendant filed a petition for resentencing on January 6, 2016, alleging that he was improperly sentenced to a consecutive four-year term under section 12022.7, subdivision (d), because great bodily injury was an element of the section 273a, subdivision (a), offense, and therefore, was prohibited under section 12022.7, subdivision (g). Moreover, defendant alleged that because his conviction was not eligible for enhancement under section 12022.7, subdivision (d), his offense is not considered a

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

violent offense under section 667.5, subdivision (c), and therefore, is not subject to the 15 percent presentence or custody credit limitation provided under section 2933.1.

The People filed a response, stating that a conviction for violating section 273a, subdivision (a), is ineligible for relief under section 1170.18 (Proposition 47). Defendant, however, did not file a motion seeking relief under Proposition 47.

On February 8, 2016, the trial court denied defendant's petition for resentencing finding that section 273a, subdivision (a), was not a qualifying felony under section 1170.18 (Proposition 47).

On March 1, 2016, defendant filed a timely amended notice of appeal.

DISCUSSION

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. We note that the People and the trial court treated defendant's petition for resentencing as a motion under Proposition 47, even though his petition was not filed under the proposition. This, however, is not relevant to the court's order denying defendant's petition. The petition, which defendant filed eight months after the sentencing in his case, challenges the validity of his plea. Even defendant acknowledged, in his petition, that the issue "is not arguable after entry of plea." 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 error in the court's denial of defendant's petition for resentencing.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.