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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS LAMAR ARNETT,

Defendant and Appellant.

G051101

(Super. Ct. No. FSB1200158)

O P I N I O N

Appeal from an order of the Superior Court of San Bernardino County, Michael A. Smith, Judge. (Retired judge of the San Bernardino Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Nancy L. Tetreault, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Jesus Lamar Arnett appeals from the trial court's order denying his petition to recall his sentence under Penal Code section 1170.126 (all statutory references are to the Penal Code). Arnett's appointed counsel filed a brief under the procedures outlined in *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel summarized the facts and procedural history of the case, and cited possible legal issues, but asserted no specific appellate claims, and asked this court to review the record to determine whether there were any arguable matters. Counsel submitted a declaration stating she thoroughly reviewed the entire record, as did an attorney at Appellate Defender's, Inc. Counsel advised Arnett she was filing a *Wende* brief, provided him a copy of the brief, would make the appellate record available to him, and advised Arnett he could personally file a supplemental brief on his own behalf raising any issues he believed worthy of consideration. Counsel did not argue against her client or assert the appeal was frivolous. She did not move to withdraw as counsel, but advised Arnett he could ask the court to relieve her as counsel. We gave Arnett 30 days to file a supplemental brief, but he has not responded. We have reviewed the record, found no arguable issues, and therefore affirm the judgment.

FACTS AND PROCEDURAL HISTORY

The facts and procedural history are recounted in our prior opinion affirming Arnett's convictions and sentence. (*People v. Arnett* (Dec. 23, 2014, G050397 [nonpub opn.].) Briefly, in May 2012, a jury convicted Jesus Lamar Arnett of two counts of forgery (§§ 475, subd. (a), 476). The trial court found Arnett suffered two prior felony convictions in 2000 for lewd or lascivious conduct against a child under the age of 14 (§ 288, subd. (a)), declined to strike either of the prior convictions (*People v. Romero* (2002) 99 Cal.App.4th 1418, 1434; § 1385) and sentenced Arnett as a third strike offender under sections 667, subdivisions (b)-(i) and 1170.12, subdivisions (a)-(d). The court imposed a term of 25 years to life for forgery, plus three consecutive one-year terms

because Arnett had served three separate prison terms within the meaning of section 667.5, subdivision (b).

In October 2014, Arnett filed a petition for resentencing under section 1170.126. In November 2014, the trial court denied the petition.

DISCUSSION

Following the *Wende* guidelines, we have reviewed counsel's brief and the entire appellate record and discern no arguable issue. This includes counsel's suggestion we consider whether the trial court correctly determined Arnett was ineligible for resentencing under section 1170.126, and whether Arnett was entitled to be present when the court denied the petition for resentencing. Arnett has not availed himself of the opportunity to file a supplemental brief (*People v. Kelly* (2006) 40 Cal.4th 106, 111 [appellate court must address issues raised personally by appellant in a *Wende* proceeding]), nor has he requested to have appellate counsel relieved. Consequently, we affirm the judgment. (*Wende, supra*, 25 Cal.3d at p. 443.)

DISPOSITION

The order is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.