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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.

BRIAN BLAKE CLEVELAND,

Defendant and Appellant.

G051569

(Super. Ct. No. 06HF1405)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Vickie L. Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Amanda Fates, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Brian Blake Cleveland appeals from an order denying his petition to recall a sentence imposed in 2007 for a felony violation of former Health and Safety Code section 11379, subdivision (a), pursuant to Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18). Cleveland appealed, and his 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, but raised no specific issues, 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 record. Counsel advised Cleveland she would file a *Wende* brief, and stated she was providing him with a copy. She advised Cleveland he could personally file a supplemental brief on his own behalf raising any issues he believed worthy of consideration, and she offered to send him a copy of the appellate record. Counsel did not argue against her client or declare the appeal was frivolous. She advised Cleveland he could ask the court to relieve her as counsel. We gave Cleveland 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 order.

FACTS AND PROCEDURAL HISTORY

In September 2006, the Orange County District Attorney filed an information alleging Cleveland sold or transported methamphetamine (former Health & Saf. Code, § 11379, subd. (a)) and resisted arrest (Pen. Code, § 148, subd. (a)(1)) in July 2006. The information also alleged Cleveland had suffered prior convictions for robbery or attempted robbery (Pen. Code, §§ 211, 664) in December 1979 (four counts of robbery), June 1981 (two counts of robbery, separate cases), November 1989 (one count each of robbery and attempted robbery), and January 1994 (robbery) within the meaning of the Three Strikes law (Pen. Code, §§ 667, subd. (d), (e)(2)(A), 1170.12, subd. (b), (c)(2)(A)). It further alleged he had served five prison terms within the meaning of Penal Code section 667.5, subdivision (b).

In January 2007, Cleveland waived his rights, pleaded guilty and admitted the prior conviction allegations. He provided the following factual basis for his plea: “In Orange County, California, on July 25, 2006, I possessed and transported a usable quantity of a controlled substance I knew was methamphetamine, and when lawfully detained by Costa Mesa Police Officer Cohen, unlawfully resisted.”

In June 2007, the trial court struck all the strike convictions except the 1994 robbery~(rt6)~ (Pen. Code, § 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 508) and imposed a nine-year prison sentence, comprised of the mitigated four-year term (two years doubled because of the strike) for transportation of methamphetamine and five consecutive one-year terms for the prior convictions (Pen. Code, § 667.5, subd. (b)). The court remarked: “The offense in this case is basically possession of a controlled substance while riding a bicycle, which I guess now in view of . . . certain [prosecutors] that’s transportation. It used to be that the [prosecutors] had a policy that they didn’t file . . . personal possession quantities as a transportation. Apparently that policy has now changed. So you ride a bicycle – we even had this discussion once. What type of means of transportation qualifies as transportation. Obviously cars do. Now bicycles do. I’m waiting for the next case of roller blades or skateboards to get there too.”

In February 2015, Cleveland filed a petition for resentencing (Pen. Code, § 1170.18, subds. (a), (f)). He alleged he was currently serving or had completed a sentence for an offense that was now classified as a misdemeanor. He requested recall of the felony sentence and resentencing as a misdemeanor. The court concluded Cleveland was not eligible for resentencing based on his violation of Health and Safety Code section 11379, subdivision (a).

DISCUSSION

Following *Wende* guidelines, we have reviewed counsel’s brief and the appellate record and discern no arguable issue. This includes counsel’s suggestion we

consider whether the court erred in denying the petition on the grounds Cleveland was ineligible for resentencing based on his violation of Health and Safety Code section 11379, subdivision (a). Cleveland 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.

FYBEL, J.