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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES EDWARD THOMAS,

Defendant and Appellant.

H039315

(Santa Clara County

Super. Ct. No. CC583911)

In 2006, defendant James Edward Thomas was convicted of residential burglary with a special enhancement that a person other than an accomplice was present in the residence at the time of the offense. (Pen. Code, §§ 459 and 667.5, subd. (c)(21).) Defendant was sentenced under the “Three Strikes” law prior to its amendment in 2012. On December 28, 2012, the defendant filed a petition for recall of sentence under the Three Strikes Law Reform Act (the Act) and Penal Code section 1170.126. On January 2, 2013, the trial court denied the petition, finding the defendant ineligible for re-sentencing under the provisions of the Act. Defendant filed a timely notice of appeal from the trial court’s order.

On appeal, we appointed counsel to represent appellant in this court. Appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) which states the case and the facts but raises no specific issues. *Wende* review is only available in a first appeal of right. (*People v. Serrano* (2012) 211 Cal.App.4th 496,

501 (*Serrano*.) Because defendant's appeal is from an order after judgment, and not a first appeal of right, he is not entitled to *Wende* review. (*Ibid.*) Therefore, we will proceed with this appeal pursuant to the standard we enunciated in *Serrano*.

Pursuant to *Serrano*, on April 9, 2013 we notified defendant of his right to submit written argument in his own behalf within 30 days. On April 29, 2013, we received a letter from defendant. In his letter defendant challenges the facts underlying his original conviction and contends that because his sentence was cruel and unusual, it should be modified pursuant to the Act. Nothing in defendant's letter raises any arguable issues on appeal from the trial court's denial of his petition for recall of sentence. Therefore, we decline to retain the case.

The appellant having failed to raise any arguable issue on appeal, we dismiss the appeal. (*Serrano, supra*, 211 Cal.App.4th at pp. 503-504.)

DISPOSITION

The appeal is dismissed.

MÁRQUEZ, J.

WE CONCUR:

RUSHING, P.J.

ELIA, J.