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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS A. VALENZUELA,

Defendant and Appellant.

B236695

(Los Angeles County
Super. Ct. No. KA050605)

APPEAL from an order of the Superior Court of Los Angeles County, Jack P. Hunt, Judge. Affirmed.

Tracy A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance on behalf of Plaintiff and Respondent.

Defendant, Luis A. Valenzuela, appeals after he pled no contest in February 2001 to one count of sexual battery by restraint (Pen. Code,¹ § 243.4, subd. (c)). A charge that defendant had committed a lewd and lascivious act upon a child under the age of 14 years old (§ 288, subd. (a)) was dismissed as part of the plea negotiation. Defendant was sentenced to three years in state prison.

On August 4, 2008, the trial court denied defendant's petition for expungement or, alternatively, to reduce the felony to a misdemeanor. (§§ 17, 1203.4a) On October 5, 2011, the trial court denied a subsequent petition to dismiss the case or reduce the felony to a misdemeanor. (§§ 17, 1203.4 [applying to probationary defendants], 1203.4a [applying to misdemeanants denied probation]; see also *People v. Mendez* (1991) 234 Cal.App.3d 1773, 1780 [post-conviction relief under sections 1203.4 and 1203.4a does not apply to person convicted of felony and committed to state prison]; *People v. Morrison* (1984) 162 Cal.App.3d 995, 999 [section 1203.4 only applies to probationers]; *People v. Borja* (1980) 110 Cal.App.3d 378, 382-383 [section 1203.4 applies only to probationers and not to discharged parolees].) Defendant filed a notice of appeal on October 7, 2011, which is deemed to be from the October 5, 2011 order denying the petition to dismiss.

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an "Opening Brief" in which no issues were raised. Instead, counsel requested this court to independently review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On January 26, 2012, we advised defendant that he had 30 days within which to personally submit any contentions or arguments he wishes us to consider. No response has been received.

We have examined the entire record and are satisfied appointed appellate counsel has fully complied with her responsibilities. No argument exists favorable to defendant in the appeal. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

¹ All further statutory references are to the Penal Code.

The October 5, 2011 order denying the petition to dismiss is affirmed.

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TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.