

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

DIANE CHRISTINE VIGIL,

Defendant and Appellant.

B286695

(Los Angeles County
Super. Ct. No.
LA084325)

APPEAL from an order of the Superior Court of the County of Los Angeles, Thomas Robinson, Judge. Affirmed.

Roberta Simon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Diane Christine Vigil (defendant) was convicted of first degree residential burglary, a felony. (Pen. Code, § 459¹). On appeal, defendant's appointed counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) requesting that this court conduct an independent review of the record to determine if there are any arguable appellate issues. On June 11, 2018, we gave notice to defendant that her counsel had failed to find any arguable issues and that she had 30 days within which to submit by brief any arguments she wished this court to consider. Defendant filed two supplemental briefs in which she raises several contentions. We have reviewed the record and the briefs and we affirm.

BACKGROUND

On December 9, 2016, defendant pleaded no contest to first degree residential burglary in violation of section 459. The trial court convicted defendant and sentenced her to state prison for a term of four years, awarded her custody credit, and ordered her to pay various fees, fines and restitution.

¹ All statutory citations are to the Penal Code unless otherwise noted.

In July 2017, defendant filed petitions for a writ of habeas corpus. On September 11, 2017, the trial court denied the habeas petitions.

On November 3, 2017, defendant filed an application for resentencing under Proposition 47 (section 1170.18).² The trial court denied the application, stating that first degree residential burglary under section 459 is “not an eligible charge for reduction under the terms of Proposition 47.”

On December 5, 2017, defendant appealed the order denying her application for resentencing under Proposition 47.³

² When defendant filed her application, section 1170.18, subdivision (a) provided, “A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing”

³ Defendant’s December 5, 2017 notice of appeal also challenges the validity of defendant’s December 9, 2016 first degree residential burglary conviction. The appeal from the conviction is untimely. (Cal. Rules of Court, rule 8.308(a).) In addition, the record does not disclose that defendant obtained a certificate of probable cause. (§ 1237.5.)

DISCUSSION

Defendant is appealing the denial of her application for resentencing under Proposition 47. But defendant's supplemental briefs attempt to establish not that she was entitled to resentencing but that she did not commit the crime for which she was convicted. She states: "My primary argument is the evidence doesn't support a [first] degree burglary [conviction], attorney misconduct, health condition which should have been the main focus showing the court I could have never ran into a garage [and] grab[bed] 2 boxes [and] run out in my condition." Defendant also argues her trial counsel was ineffective because he "stated to [defendant] that he knows [defendant] didn't do the crime but [defendant should] just take [the] time [4 years under the plea agreement] or [the trial court] will give [defendant] 5 years 8 months on [a prior case for which defendant received a suspended sentence and probation] and whatever time I got in this case."

In the alternative, defendant asks the court to reclassify her first degree residential burglary conviction as one for receiving stolen property to make her eligible for resentencing under Proposition 47. Because we have no jurisdiction to review defendant's conviction, we decline defendant's request.

We hold that defendant is not eligible for resentencing under Proposition 47 because first degree residential burglary is

not among the offenses enumerated in section 1170.18, subdivision (a). Accordingly, the trial court properly denied defendant's application for resentencing.

In addition to reviewing the matters raised in defendant's supplemental briefs, we have made an independent examination of the entire record to determine if there are any other arguable issues on appeal. Based on that review, we have determined that there are no other arguable issues on appeal. We are therefore satisfied that defendant's counsel has fully complied with her responsibilities under *Wende, supra*, 25 Cal.3d 436.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

JASKOL, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.