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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

HON C. LAU,

Defendant and Appellant.

B241542

(Los Angeles County
Super. Ct. No. GA051057)

APPEAL from an order of the Superior Court of Los Angeles County, Candace Beason, Judge. Affirmed.

Robert E. Boyce, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Hon C. Lau appeals from the trial court's denial of his motion for new trial and his request to be transferred to Hong Kong to serve his sentence. We deem his appeal a petition for writ of habeas corpus and deny the petition.

On September 22, 2003, defendant was convicted of first degree murder. The following year, we affirmed the judgment. (*People v. Lau* (Dec. 20, 2004, B171427 [nonpub. opn.].)

On May 8, 2012, defendant filed the motions at issue. On May 9, the trial court determined that it had no jurisdiction to consider either motion and took no action. On May 25, defendant filed a notice of appeal and requested a certificate of probable cause, which the trial court declined to issue.

On October 25, 2012, defendant's appointed counsel filed an opening brief requesting that we conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738. Counsel advised the court that he had sent a letter to defendant informing him of the nature of the brief that had been filed and a copy of the record. That same day, we advised defendant that he had 30 days within which to submit any issues that he wished to have considered. To date, we have received no response.

Upon examination of defendant's motion filed in the superior court, it is more properly deemed a petition for writ of habeas corpus. His motion for new trial alleges that he is factually innocent of the charge and his request to be transferred to Hong Kong challenges the conditions of his confinement. Both claims should have been raised by way of a petition for writ of habeas corpus. (Pen. Code, §1473, subd. (a) ["Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint."]; *In re Martinez* (2009) 46 Cal.4th 945, 955 ["A petition for writ of habeas corpus initiates judicial proceedings to determine the lawfulness of the petitioner's confinement."]; *People v. Villa* (2009) 45 Cal.4th 1063, 1069 [petitioner in custody may challenge the conditions of confinement with petition for writ of habeas corpus].) Thus, the trial court incorrectly concluded that it did not have jurisdiction to consider his

petition. (Cal. Const., art. VI, § 10 [Supreme Court, courts of appeal, and superior courts have original jurisdiction in habeas proceedings].)

Nonetheless, remanding the matter to the trial court for it to rule on the petition in the first instance would be a waste of judicial resources and we will deem defendant's appeal a petition for writ of habeas corpus. (See *People v. Garrett* (1998) 67 Cal.App.4th 1419, 1423 [appellate court deemed appeal of denial of writ of habeas corpus, which does not lie, as an original petition in interest of judicial economy].) With respect to defendant's claim of factual innocence, he provided nothing more than a conclusory allegation. He submitted no evidence to support his position. Denial on that basis alone is warranted. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) As to defendant's request to be transferred to Hong Kong, on April 1, 2011, he filed a petition for writ of habeas corpus seeking the same relief, which we summarily denied. (*In re Lau on Habeas Corpus* (Apr. 21, 2011, B231987).) As he did in the prior writ petition, defendant relies on an agreement between Hong Kong and the United States relating to the transfer of prisoners to support his claim that he is entitled to be sent to Hong Kong's jurisdiction. "It has long been the rule that absent a change in the applicable law or the facts, the court will not consider repeated applications for habeas corpus presenting claims previously rejected." (*In re Clark* (1993) 5 Cal.4th 750, 767.) As such, defendant's current petition may be summarily denied.

DISPOSITION

The order is affirmed. We treat the appeal as a petition for writ of habeas corpus and deny the petition.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.