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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

LARRY E. GOMES,

Defendant and Appellant.

B289588

(Los Angeles County
Super. Ct. No. A326724-01)

APPEAL from an order of the Superior Court of
Los Angeles County, David M. Horwitz, Judge. Affirmed.

Jonathan B. Steiner, Executive Director, and Richard
Lennon, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On December 19, 1975, a jury found appellant Larry E. Gomes guilty of second degree burglary in violation of Penal Code¹ section 459, for a daytime burglary of a residence.

On October 12, 2017, appellant filed a petition, pursuant to section 1170.18, requesting the court to resentence him to a misdemeanor because the amount in question was less than \$950 and that his offense qualified for reduction to a misdemeanor under Proposition 47. The trial court conducted a hearing on the petition and denied it on the ground that section 1170.18 was not applicable because the appellant had burgled a residence rather than a business which rendered his conviction ineligible for resentencing under Proposition 47. In his notice of appeal, appellant complained that the court erred in failing to appoint counsel to represent him at the hearing on the petition and erred in failing to find that his offense qualified for resentencing under Proposition 47.

We appointed counsel to represent appellant in the matter. After examining the record, counsel filed a *Wende* brief raising no issues on appeal and requesting that we independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) On August 10, 2018, we directed appointed counsel to immediately send the record on appeal and a copy of the opening brief to appellant. We notified appellant that within 30 days from the date of the notice he could submit by letter or brief any ground of appeal, contention or argument he wished us to consider. We received no response.

¹ All statutory references are to the Penal code unless otherwise indicated.

We have independently examined the record and are satisfied that appellant's attorney has fully complied with his responsibilities and, as we discuss below, that no arguable appellate issue exists. (*People v. Wende, supra*, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

The court correctly ruled that appellant's residential burglary conviction is not among the offenses eligible for resentencing or reduction to a misdemeanor under Proposition 47. (§ 1170.18, subd. (a).) Furthermore, defendant did not have a Sixth Amendment right to counsel at the initial eligibility stage of his petition. (*People v. Rouse* (2016) 245 Cal.App.4th 292, 299.) Consequently, the trial court properly denied the petition. No other basis for appeal appears in the record, and accordingly, we affirm.

DISPOSITION

The order is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.