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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO CHAVEZ,

Defendant and Appellant.

B280478

(Los Angeles County
Super. Ct. No. KA107233)

APPEAL from an order of the Superior Court of
Los Angeles County, Rogelio G. Delgado, Judge. Affirmed.

David R. Greifinger, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Fernando Chavez appeals from the trial court's denial of his motion to vacate a postjudgment order denying his petition to reduce his felony conviction to a misdemeanor under Proposition 47, the Safe Neighborhoods and Schools Act (Pen. Code, § 1170.18). Following a review of the record, Chavez's appointed counsel identified no meritorious issues; our own independent review of the record similarly identified no error. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2014 Chavez entered a negotiated plea of no contest to one felony count of possession of contraband (methamphetamine) in jail (Pen. Code, § 4573.6, subd. (a)) and one misdemeanor count of violating a domestic relations order (Pen. Code, § 273.6, subd. (a)) and admitted he had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j); 1170.12). He was sentenced to a state prison term of four years.

On July 6, 2015 the trial court denied Chavez's petition to recall his felony sentence for possession of a controlled substance in jail and to resentence him to a misdemeanor under Proposition 47, finding him ineligible for the requested relief. This court affirmed the ruling on appeal. (*People v. Chavez* (Mar. 8, 2016, B265801) [nonpub. opn.])

On October 11, 2016 Chavez, representing himself, moved to vacate the July 6, 2015 order on the ground his appointed counsel was constitutionally ineffective in failing to argue that a denial of Proposition 47 relief would violate Chavez's right to

equal protection pursuant to *People v. Noyan* (2014) 232 Cal.App.4th 657. The trial court denied the motion.¹

DISCUSSION

We appointed counsel to represent Chavez on this appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On May 17, 2017 we advised Chavez he had 30 days within which to submit any contentions or issues he wished us to consider. We have received no response.

In *People v. Noyan, supra*, 232 Cal.App.4th at pages 663-664 the court held there was no rational basis for excluding from county jail sentencing (rather than state prison sentencing) under Penal Code section 1170, subdivision (h), defendants who bring alcohol or a noncontrolled substance or related paraphernalia into a custodial facility, when similarly situated defendants who bring a controlled substance or related paraphernalia into such a facility are eligible for county jail sentencing. Because this difference violated equal protection, the court modified Penal Code section 4573.5 so that it included the county jail provision of Penal Code section 1170, subdivision (h). The equal protection issue of *Noyan* has no bearing on the trial court's denial of Proposition 47 relief to Chavez, which we previously concluded was proper. (See *People v. Chavez, supra*, B265801, at p. 2.)

We have examined the entire record and are satisfied Chavez's appellate attorney has fully complied with the

¹ We seriously question whether Chavez's nonstatutory motion to vacate a postjudgment order, rather than a petition for writ of habeas corpus, was properly before the superior court and whether its denial is properly raised by appeal. (See *People v. Totari* (2002) 28 Cal.4th 876, 882.)

responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

MENETREZ, J.*

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