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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.

ALEXANDER ESTRADA,

Defendant and Appellant.

B263924

(Los Angeles County
Super. Ct. No. YA088554)

APPEAL from an order of the Superior Court of the County of Los Angeles, Scott Millington, Judge. Affirmed.

Tyrone A. Sandoval, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Alexander Estrada (defendant) appealed an order denying appellant's petition for resentencing under Penal Code section 1170.18.¹ On appeal, appointed counsel for defendant filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 requesting that this court conduct an independent review of the record to determine if there are any issues which if resolved in defendant's favor would require reversal or modification of the judgment or appealable order. On October 13, 2015, we gave notice to defendant that his counsel had failed to find any arguable issues and that defendant had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. Defendant did not file a response brief or letter. After independently reviewing the record, we affirm the order.

BACKGROUND

In January 2014, defendant was convicted of second degree burglary in violation of section 459, a felony. Defendant petitioned for resentencing of the second degree burglary conviction under section 1170.18.

At the hearing on defendant's petition, defendant's counsel argued that defendant's conviction for second degree burglary in violation of section 459 constitutes, for the purposes of resentencing, a conviction of grand theft under section 487 and therefore eligible for resentencing as a misdemeanor conviction of section 490.2 (petty theft). The People opposed the petition arguing that the space defendant burglarized was a residential structure undergoing remodeling—not a commercial establishment opened during regular business hours—and therefore the facts underlying the conviction would not have constituted the crime of shoplifting in violation of section 459.5.

The trial court denied defendant's petition, finding that a conviction of section 459 was eligible for resentencing under section 1170.18 as a conviction of section 459.5 only,

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

but that defendant had not met the burden of showing that his conviction was eligible for reduction—i.e., that he entered a commercial establishment open during regular business hours, required by section 459.5. Defendant filed a timely notice of appeal.

DISCUSSION

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 arguable issues on appeal. (*People v. Acosta* (2015) 242 Cal.App.4th 521, 526-527.) We are therefore satisfied that defendant's counsel has fully complied with his responsibilities under *People v. Wende, supra*, 25 Cal.3d 436.

DISPOSITION

We affirm the order.

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MOSK, J.

We concur:

TURNER, P. J.

BAKER, J.