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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.

JOE PETER MONTOYA,

Defendant and Appellant.

B281354

(Los Angeles County
Super. Ct. No. BA119357 &
BA138799)

APPEAL from an order of the Superior Court of Los Angeles County, Norm Shapiro, Judge. Affirmed.

Gloria C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Joe Peter Montoya purportedly appeals from a post judgment order denying his application to reduce his 1995 and 1996 felony convictions to misdemeanors under Penal Code section 17, subdivision (b). We affirm.

Montoya pleaded guilty to aggravated assault (Pen. Code, § 245, subdivision (a)(1)) in 1995 and was placed on three years of probation on condition he serve 108 days in county jail, with credit for time served, in Los Angeles Superior Court case number BA119357.

Montoya pleaded guilty to armed robbery (Pen. Code, §§ 211, 12022) in 1996 and was sentenced to a state prison term of four years in case number BA138799. His probation in case number BA119357 was revoked and terminated.

Montoya was convicted in 2006 of misdemeanor impersonation (Pen. Code, § 529) in case number 06F06958.

On January 11, 2017, Montoya filed an application in the trial court to reduce his three prior convictions to misdemeanors, relying on Penal Code section 17, subdivision (b). The court denied the request on January 24, 2017, noting Montoya's robbery conviction was a felony and his impersonation conviction was a misdemeanor.

On February 22, 2017, Montoya filed a notice of appeal from the January 24, 2017 order. Montoya appended to the notice of appeal an unfiled document entitled "Petition for Commutation of Sentence" in which Montoya stated he had pleaded guilty on August 3, 2016 to having reentered the United States illegally as an undocumented immigrant, was sentenced to a term of 24 months in federal prison and thereafter subject to deportation proceedings.

We appointed counsel to represent Montoya on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On September 14, 2017, we advised Montoya he had 30 days within which to personally submit any contentions or issues he wished us to consider. On October 13, 2017, the notice was returned by the federal prison in Atlanta, Georgia, marked “Return To Sender, Refused; Unable To Forward.” The same day, notice was resent to Montoya at the same address.¹ We have received no response.

We have examined the entire record and are satisfied appellate attorney has fully complied with the responsibilities of counsel. The superior court properly denied the application because it did not disclose facts warranting relief under Penal Code section 17, subdivision (b). (See Penal Code, § 17, subd. (b)(1)-(5).)

¹ When we appointed appellate counsel for Montoya, we directed Montoya “to keep the court informed of his/her mailing address at all times. If you move, you MUST notify the clerk of this court immediately; otherwise you may not receive important notices concerning your appeal.” Montoya has not provided any information regarding his current address if he is no longer in federal custody in Atlanta, Georgia.

DISPOSITION

The order is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

BENSINGER, J.*

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