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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.

FAUSTO R. QUEVADO,

Defendant and Appellant.

B266078

(Los Angeles County
Super. Ct. No. BA268208)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In December 2004 defendant and appellant Fausto Quevedo was sentenced to state prison for two years based on his guilty plea to assault with a deadly weapon (a baseball bat) (Pen. Code, § 245, subd. (a)(1)).¹ On June 11, 2015, defendant filed a petition seeking dismissal of his conviction pursuant to section 1203.4 and reduction to a misdemeanor under section 17. The trial court denied the petition on the basis defendant had been committed to state prison and was therefore ineligible, as a matter of law, for the relief sought in the petition.

Defendant filed a timely notice of appeal. This court appointed counsel to represent defendant on appeal. On March 21, 2012, appointed counsel filed a brief raising no issues, asking this court to independently review the record for appellate contentions under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Defendant was advised by letter of his right to file a supplemental brief within 30 days. No supplemental brief was received within the 30-day period.

We have completed our review of the record in this case and conclude that appellate counsel satisfied his constitutional obligation by filing a *Wende* brief. Defendant's petition under section 1203.4 was properly denied. Section 1203.4, subdivision (a), permits a defendant *who was granted probation* to withdraw a guilty plea under specified circumstances. Relief under section 1203.4 is not available to a person, such as defendant, who was not placed on probation but instead was committed to state prison. (*People v. Mendez* (1991) 234 Cal.App.3d 1773, 1780; *People v. Borja* (1980) 110 Cal.App.3d 378, 380.)

Defendant was also not entitled to reduction of his assault with a deadly weapon conviction to a misdemeanor under section 17. Although assault with a deadly weapon is an alternate felony/misdemeanor—referred to as a “wobbler” under California law—the offense became a felony as a matter of law upon defendant's commitment to state prison. “A wobbler offense charged as a felony is regarded as a felony for all purposes until

¹ Statutory references are to the Penal Code.

imposition of sentence or judgment. [Citations.] If state prison is imposed, the offense remains a felony” (*People v. Upsher* (2007) 155 Cal.App.4th 1311, 1320.) A trial court has no discretion to reduce a felony to a misdemeanor under section 17. (*People v. Mauch* (2008) 163 Cal.App.4th 669, 674.)

The judgment is affirmed. (*Smith v. Robbins* (2000) 528 U.S. 259.)

KRIEGLER, ACTING P.J.

We concur:

BAKER, J.

RAPHAEL, J.*

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