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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO D. LOMELI,

Defendant and Appellant.

2d Crim. No. B296443
(Super. Ct. No. LA050081)
(Los Angeles County)

Alejandro D. Lomeli appeals an order denying his petition for resentencing (Pen. Code, § 1170.91)¹ following his prior second degree murder conviction.

We appointed counsel to represent Lomeli in this appeal. After examination of the record, his counsel filed an opening brief requesting the court to make an independent review under *People v. Wende* (1979) 25 Cal.3d 436.

On October 11, 2019, we sent a letter advising Lomeli that he had 30 days within which to personally submit any

¹ All further statutory references are to the Penal Code.

contentions or issues that he wished us to consider. He has filed a supplemental brief.

Lomeli contends the trial court erred by ruling that he was not eligible for resentencing under section 1170.91. He notes that in 2008, he was sentenced to 15 years to life with a consecutive one year term under section 12022, subdivision (b)(1). He filed a petition for resentencing under section 1170.91.

Section 1170.91, subdivision (a) provides, in relevant part: “If the court concludes that a defendant convicted of a felony offense is, or was, a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service, the court shall consider the circumstance as a factor in mitigation *when imposing a term under subdivision (b) of Section 1170.*” (Italics added.)

Section 1170, subdivision (b) provides, in relevant part: “When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court.”

The trial court correctly found Lomeli did not fall within section 1170.91 because that provision only applies to “determinate sentencing law in which a triad sentence is applicable.” Lomeli’s sentence does not fall within section 1170, subdivision (b). The trial court did not err.

After examination of the record, we are satisfied that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at pp. 441, 443.)

The judgment is affirmed.
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GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Frank M. Tavelman, Judge
Superior Court County of Los Angeles

Roberta Simon, under appointment by the Court of Appeal,
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.