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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS URBINA MARTINEZ,

Defendant and Appellant.

B268278

(Los Angeles County
Super. Ct. No. SA089692)

APPEAL from an order of the Superior Court of Los Angeles County,
Kathryn Solorzano, Judge. Affirmed.

Deborah L. Hawkins, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Carlos Urbina Martinez appeals from the order denying his request for resentencing under Proposition 47. (Pen. Code, § 1170.18.)¹ His appointed counsel filed a no-issue brief under *People v. Wende* (1979) 25 Cal.3d 436. We notified defendant of his right to respond, but received no response.

In March 2015, appellant was charged with first-degree burglary, person present, based on his entry into an apartment on January 28, 2015. In July 2015, the information was amended to add a second-degree burglary count based on the same underlying facts. Appellant pled no contest to second-degree burglary (§§ 459, 460), and was sentenced to three years in prison. In October 2015, he requested a reduction of his felony conviction to a misdemeanor. He was found ineligible and his request was denied.

Section 459 defines burglary generally, whereas section 460 specifies that residential burglary is of the first degree, and all other burglaries are of the second. (§ 460 [“Every burglary of an inhabited dwelling house . . . or the inhabited portion of any other building, is burglary of the first degree”]; *People v. Deay* (1987) 194 Cal.App.3d 280, 284 [There is “no practical difference between burglary of an inhabited dwelling house and residential burglary”].) Neither section 459, nor section 460 is listed in section 1170.18, subdivision (a), which makes misdemeanor resentencing available to “[a] person currently serving a sentence for a conviction” under “Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code” Newly added section 459.5 creates an exception to section 459 only for misdemeanor shoplifting, which requires entering “a commercial establishment.” (459.5, subd. (a).) That exception does not aid appellant. A “commercial establishment . . . is primarily engaged in commerce, that is, the buying and selling of goods or services.” (*In re J.L.* (2015) 242 Cal.App.4th 1108, 1114 [school not commercial establishment].) Although he pled no contest to second-degree burglary, the factual basis for appellant’s plea (entry into an apartment) did not involve entry into a commercial establishment.

¹ Undesignated statutory references are to the Penal Code.

Having reviewed the record on appeal, we find no arguable issues. (*People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The order is affirmed.

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We concur:

EPSTEIN, P. J.

MANELLA, J.

COLLINS, J.