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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re NATHAN LEE LUCERO,

on Habeas Corpus.

E058986

(Super.Ct.No. RIC1305180)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. Petition granted in part and denied in part, with directions.

Nathan Lee Lucero, in pro. per., for Petitioner.

Kamala D. Harris, Attorney General, Collette C. Cavalier, Deputy Attorney General, for Respondent.

DISCUSSION

In this matter, the People agree that the record clearly indicates that the trial court was unaware that it had the discretion to sentence petitioner to a term of 25 years to life rather than a mandatory term of life without the possibility of parole. (Pen. Code, § 190.5.) Hence, the petition must be granted to the extent that we will direct the trial court to schedule a new sentencing hearing and permit the filing of briefs on the

appropriate term. As the People concede that relief is appropriate, we may act without issuing an order to show cause. (Cf. *People v. Duvall* (1995) 9 Cal.4th 464 and *People v. Romero* (1994) 8 Cal.4th 728.) This result also moots petitioner’s claims of cruel and unusual punishment. (See *Miller v. Alabama* (2012) ___U.S.____ [132 S.Ct. 2455].)

DISPOSITION

Accordingly, the petition is granted in part as follows: the matter is remanded to the Superior Court of Riverside County. The court shall appoint counsel for petitioner and set a briefing schedule as well as a new sentencing hearing at which the trial court may exercise the discretion conferred by Penal Code section 190.5. In all other respects the petition is denied.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

KING
J.