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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PORFIRIO COLLADO JIRON,

Defendant and Appellant.

G045581

(Super. Ct. No. 03WF0562)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Craig E. Robison, Judge. Affirmed.

Reed Webb, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

We appointed counsel to represent Porfirio Enrique Collado on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against his client but advised the court no issues were found to argue on his behalf. Collado was given 30 days to file written argument on his own behalf. That period has passed, and we have received no communication from him.

Counsel did not provide the court with any specific information to assist it with its independent review pursuant to *Anders v. California* (1967) 386 U.S. 738. We have reviewed the information provided by counsel and have independently examined the record. We found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We affirm the judgment.

FACTS

In 2003, a jury convicted Collado of infliction of corporal injury on his spouse and felony child abuse. In *People v. Collado* (Feb. 17, 2005, G033296) [nonpub. opn.], we affirmed the judgment of conviction, and the California Supreme Court later denied his petition for review. Collado served a three-year prison sentence. The record does not establish, and Collado has not alleged, he is in custody, on probation, or on parole as a result of his 2003 conviction. Rather, the record indicates he is being held at Theo Lacy Facility in Orange, California, by the Department of Homeland Security/Immigration and Customs Enforcement, due to immigration proceedings.

On July 7, 2011, Collado filed a motion in the Orange County Superior Court. The pleading was entitled, “Notice of Motion and Motion to Vacate Plea Based Upon Ineffective Assistance of Counsel.” In an attached declaration, Collado claimed his legal representation in his 2003 trial was ineffective because his lawyer did not “negotiate a non-deportable disposition.”

In a lengthy written order, the trial court denied Collado’s motion. The court found it did not have jurisdiction to consider Collado’s “motion.” The court cited *People v. Picklesimer* (2010) 48 Cal.4th 330, 337, for the general rule there is no

authority for a court to address a postjudgment motion unrelated to any proceeding then pending before the court. The court further found Collado's "motion" could not be treated as a petition for habeas corpus because he failed to allege he remains in state custody, a requirement for a habeas petitioner. (*People v. Villa* (2009) 45 Cal.4th 1063, 1073-1074.)

DISCUSSION

Penal Code section 1016.5 provides that prior to acceptance of a plea of guilty or nolo contendere, the trial court must give a defendant the following advisement on the record: "If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States." (Pen. Code, § 1016.5, subd. (a).) No such corollary requirement exists if a defendant avails himself of his right to a jury trial. We find no evidence of ineffective assistance of counsel based on a failure of counsel to advise Collado that a conviction by the jury could have immigration consequences.

The order is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.