

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

HUMBERTO MORGUTIA, JR.,

Defendant and Appellant.

G052773

(Super. Ct. No. C64298)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Kazuharu Makino, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Joshua L. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Humberto Morgutia, Jr.,<sup>1</sup> pled guilty in 1987 to two counts of battery with serious injury (Pen. Code, § 243, subd. (d)). He was placed on formal probation and ordered to serve a year in the county jail. Last August, he filed an application to have his felony convictions reduced to misdemeanors pursuant to Penal Code section 1170.18, subdivision (f) – a motion for what is generally referred to as Proposition 47 relief.<sup>2</sup>

The trial court denied his motion on the basis the charges for which he was convicted are not eligible for Penal Code section 1170.18 relief. While appellant may have had other sections in mind, the relief he sought is available only to those convicted of relatively minor drug or theft crimes.

Appellant filed a timely appeal, and we appointed counsel to represent him on that appeal. Counsel investigated the case, concluded as the trial court had – and as we have – that appellant had sought relief under a statute that did not apply to him, and did what the law requires: He filed a brief which set forth the procedural facts of the case (the facts of the crimes themselves are largely irrelevant because the argument was solely directed at Morgutia’s plea and the application to it of Pen. Code, § 1170.18) and acknowledged his inability to find an arguable issue. He did not argue against his client, but advised us there were no issues to argue on his behalf.

Morgutia was invited to express his own objections to the proceedings against him, but did not. Under the law, this put the onus on us to review the record and see if *we* could find any issues that might result in some kind of amelioration of Morgutia’s lot. (*People v. Wende* (1979) 25 Cal.3d 436.) We could not.

---

<sup>1</sup> Appellant’s name has been misspelled on various occasions as Morguita. Appellate counsel informs us it is in fact Morgutia, and we have made that change in the record.

<sup>2</sup> Appellant had previously filed a motion seeking the same relief and withdrawn it. He also filed an earlier appeal in this case (case No. G052568) but that appeal was dismissed as premature because it was filed before the trial court had ruled.

We have examined the record and found no arguable issue. Penal Code section 1170.18 does not apply to someone who has pled guilty to battery with injury. The order is therefore affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.