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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH EARL SMITH, JR.,

Defendant and Appellant.

B270196

(Los Angeles County
Super. Ct. No. VA116772)

APPEAL from an order of the Superior Court of Los Angeles County, Roger T. Ito, Judge. Dismissed.

Carlo Andreani, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

Defendant, Joseph Earl Smith, purports to appeal from an order denying his reconsideration motion. Defendant asserts the trial court improperly imposed restitution fines without holding a hearing concerning his ability to pay them. We previously modified the judgment. (*People v. Smith* (Jan. 11, 2011, B230679) [nonpub. opn.].) Defendant's reconsideration request is in fact a motion to modify the restitution fine portion of the judgment. We recognized this may involve a purported appeal from a nonappealable order. We have a duty to raise issues concerning our jurisdiction on our own motion. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126; *Olson v. Cory* (1983) 35 Cal.3d 390, 398.) Thus, we issued an order to show cause concerning possible dismissal of the appeal and placed the matter on calendar. After the matter was placed on calendar, appointed appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. (See *Smith v. Robbins* (2000) 528 U.S. 259, 271-284.)

The denial of a motion to modify the judgment is ordinarily nonappealable. (*People v. Mendez* (2012) 209 Cal.App.4th 32, 34, fn. 1; *People v. Cantrell* (1961) 197 Cal.App.2d 40, 43.) Also, defendant's paperwork resembles a habeas corpus petition. An order denying a habeas corpus petition ordinarily is not appealable. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7; *In re Hochberg* (1970) 2 Cal.3d 870, 876, disapproved on other grounds

in *In re Fields* (1990) 51 Cal.3d 1063, 1070, fn. 3.) The order under review is nonappealable. There is no merit to defendant's argument this is an appeal from a jurisdictionally void order. The trial court was expressly vested with the duty to impose the restitution fines. (Former Pen. Code, §§ 1202.4, subd. (b)(1), 1202.45.)

The appeal is dismissed.

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TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.