

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KWAN ISIAH SMITH,

Defendant and Appellant.

B296176

(Los Angeles County
Super. Ct. No. YA093456)

APPEAL from an order of the Superior Court of Los Angeles County, Edmund Wilcox Clarke, Jr., Judge. Appeal dismissed.

Myra Sun, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Kwan Isiah Smith appeals from the trial court's order dismissing his postjudgment motion to modify the victim restitution order on the grounds that he was denied the opportunity to contest the amount of victim restitution and that insufficient evidence supported the order. As we explain, the trial court properly dismissed the motion, concluding that it lacked jurisdiction to modify the order. Accordingly, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND¹

In November 2016, appellant pleaded guilty to five counts of first degree residential robbery and five counts of home invasion robbery. In exchange for his plea, it was agreed that the court would sentence him to 12 years in state prison and order victim restitution. Concerning victim restitution, the probation officer's report disclosed that some of the stolen personal property, including jewelry, had been returned to the victims, but other items of jewelry had not been recovered.

During the sentencing hearing, the prosecutor informed the court that the two victims stated "that the items that they are really seeking restitution [for are] the wedding rings that were stolen and not recovered. In total, it was two rings, and it amounted to \$170,000." Appellant's trial counsel stipulated to the amount sought. After that, the court sentenced appellant to 12 years in state prison and ordered him to pay \$170,000 in victim restitution under Penal Code section 1202.4, subdivision (f).²

¹ Only the facts and procedural history relevant to the issues on appeal are included here.

² All statutory references are to the Penal Code.

In January 2019, appellant, in propria persona, filed a motion in the trial court for modification of a victim restitution order. Appellant claimed that the court erred in failing to conduct a restitution hearing to provide appellant an opportunity to contest the amount of restitution claimed by the victims. Appellant asserted that by the time of the sentencing hearing, the victims had already recovered all property stolen during the robbery. Appellant requested that the court reduce the amount of victim restitution to \$200. The trial court denied the motion, concluding it lacked jurisdiction to modify the order.

This appeal timely followed.

DISCUSSION

In general, a trial court lacks jurisdiction to modify a criminal defendant's sentence after the execution of the sentence has begun. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204–1205 (*Turrin*).) Only a few exceptions to this rule exist. For example, under section 1170, subdivision (d), a trial court can recall the sentence on its own motion within 120 days after committing a defendant to prison. (See § 1170, subd. (d).) A trial court may also correct a clerical error in a sentence or an unauthorized sentence at any time. (*Turrin, supra*, 176 Cal.App.4th at pp. 1204–1205.)

In addition, as to victim restitution orders imposed under section 1202.4, subdivision (f), a trial court retains jurisdiction, post-sentencing, to modify or impose restitution when the economic losses of a victim cannot be ascertained at the time of sentencing. (See §§ 1202.4, subd. (f), 1202.46.) Section 1202.4, subdivision (f) has also been interpreted to allow for modification of a victim restitution order after sentencing based on changed circumstances. (See, e.g., *People v. Jennings* (2005) 128 Cal.App.4th 42, 58–59 [interpreting section 1202.4, subdivision (f)(1) to permit a defendant

to seek a reduction in the victim restitution order to account for payments by his insurer to the victim in settlement of a civil action].)

None of these exceptions or circumstances apply here. The victim's losses were not uncertain at the time of sentencing. And nothing in the record demonstrates a clerical error in the rendition of the restitution order or that it was legally unauthorized. In addition, appellant is not seeking to modify the restitution order based on a change of circumstances. Rather, nearly three years after the order was entered, appellant challenges the restitution order because he was never given a separate hearing to contest the amount of the victim restitution, and he claims the prosecution failed to present evidence of the actual losses. Although section 1202.4, subdivision (f)(1) allows a defendant to request a hearing to "dispute the determination of the amount of restitution," absent such a request, the court is not required to conduct a separate restitution hearing. (See § 1202.4, subd. (f)(1).) At sentencing in this case, appellant did not request a hearing to contest the restitution request or otherwise object to it. Instead, appellant's counsel stipulated to the amount of restitution the victims requested.³

Given the record, the trial court properly concluded it lacked jurisdiction to modify the victim restitution order in this case. (See *People v. Littlefield* (2018) 24 Cal.App.5th 1086, 1092; *Turrin, supra*, 176 Cal.App.4th at pp. 1204–1205.) And because the trial court lacked jurisdiction, the court's order denying appellant's motion is nonappealable, and thus, subject to dismissal by this court. (See *People v. Littlefield, supra*, 24 Cal.App.5th at

³ Appellant does not claim his trial counsel was ineffective.

p. 1092 [trial court lacked jurisdiction to vacate victim restitution order, and thus the appellate court dismissed the appeal from the order, finding it was not appealable under section 1237, subd. (b)]; accord, *Turrin, supra*, 176 Cal.App.4th at p. 1208; *People v. Mendez* (2012) 209 Cal.App.4th 32, 34 [order denying motion to reduce restitution fine to legal minimum filed more than three years after execution of sentence was nonappealable and dismissed].)

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.