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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL THOMAS HIRIARTE,

Defendant and Appellant.

B277640

(Los Angeles County
Super. Ct. No. VA044027)

APPEAL from an order of the Superior Court of Los Angeles County. Michael A. Cowell, Judge. Appeal dismissed.

Daniel T. Hiriarte, in pro. per.; and Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Daniel T. Hiriarte appeals from the superior court's denial of his motion for modification of sentence. After examination of the record, appointed counsel filed an opening brief raising no issues and asking this court to independently review the record. Appellant filed his own supplemental brief, in propria persona, in which he challenges his 1998 conviction and contends his sentence was unduly harsh. Following review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we are satisfied that appellant's attorney has fully complied with her responsibilities, and we dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

On July 24, 1998, a jury convicted appellant of the first degree murder of Victor Vaca. (Pen. Code,¹ § 187.) On November 5, 1998, the court sentenced appellant to an indeterminate term of 25 years to life, with the possibility of parole. On March 29, 2000, this court affirmed appellant's conviction and sentence in full (B127918).

Thereafter, on July 26, 2016, appellant filed a motion in the superior court to reduce his sentence so that he would be eligible for parole in 15 years, rather than 25. The superior court denied the motion on the ground that, under section 1170, subdivision (d), its jurisdiction to modify the sentence had expired 120 days after committing appellant to prison. On September 13, 2016, appellant filed a notice of appeal from the superior court's order denying his motion for modification of his sentence.

“[G]enerally a trial court lacks jurisdiction to resentence a criminal defendant after execution of sentence has begun.

¹ Undesignated statutory references are to the Penal Code.

[Citation.]’ [Citations.] There are few exceptions to the rule.” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204 (*Turrin*).) For example, section 1170, subdivision (d) allows the trial court to recall a defendant’s sentence on its own motion within 120 days after committing a defendant to prison, but does not authorize the defendant to file his own motion to recall the sentence. (*Turrin, supra*, at p. 1204.) A trial court may also correct a clerical error and an unauthorized sentence at any time. (*Id.* at p. 1205.) And “section 1202.42 confers continuing jurisdiction with respect to victim restitution,” but not restitution fines. (*Id.* at p. 1208.) None of these exceptions applies in the present case.

Section 1237, subdivision (b) provides that a defendant may appeal “[f]rom any order made after judgment, affecting the substantial rights of the party.” (*Turrin, supra*, 176 Cal.App.4th at p. 1208.) Because the superior court lacked jurisdiction to resentencing appellant, its order denying appellant’s motion requesting a reduction in his sentence did not affect his substantial rights. It is therefore not an appealable postjudgment order. The appeal should be dismissed. (*Ibid.*)

DISPOSITION

The appeal is dismissed.

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LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.