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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID LEE FERNANDEZ,

Defendant and Appellant.

B278487

(Los Angeles County
Super. Ct. Nos. KA053030,
MA036875, MA037601)

APPEAL from orders of the Superior Court of Los Angeles County, Wade Olson, Charles A. Chung, and Daviann L. Mitchell, Judges. Appeal dismissed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant David Lee Fernandez appeals from orders denying his postjudgment motions to modify restitution fines that were imposed following his convictions in three prior cases. His court-appointed counsel filed a brief raising no legal issues and requested that this court conduct an independent review pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). However, since defendant has appealed from nonappealable orders, we must dismiss the appeal. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1208 (*Turrin*).)

FACTUAL AND PROCEDURAL SUMMARY

In case No. KA053030, defendant pleaded no contest in August 2001 to unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) and admitted he had suffered a prior serious felony conviction (Pen. Code, §§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)).¹ The court convicted defendant and sentenced him to a four-year state prison term. The court also imposed a \$200 restitution fine (§ 1202.4, subd. (b)) and a stayed \$200 parole restitution fine (§ 1202.45).

In case No. MA036875, defendant pleaded no contest in January 2007 to being a felon in possession of ammunition (former § 12316, subd. (b)(1)) and admitted he had suffered a prior serious felony conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). Defendant was convicted and sentenced to a term of 32 months in state prison. The court ordered him to pay a \$500 restitution fine (§ 1202.4, subd. (b)) and a stayed \$500 parole restitution fine (§ 1202.45).

In case No. MA037601, a jury convicted defendant in March 2011 of second degree murder (§ 187, subd. (a)). Defendant

¹ All further statutory references are to the Penal Code.

admitted he had suffered a prior serious felony conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)). The court sentenced him to a term of 30 years to life in state prison. The court also ordered him to pay a \$10,000 restitution fine (§ 1202.4, subd. (b)) and a stayed parole restitution fine of \$10,000 (§ 1202.45).

In August 2016, defendant filed three ex parte motions for disposition of fines pursuant to sections 1205, subdivision (a) and 2900.5 with regard to the restitution fines imposed at sentencing in the prior cases. In each motion, defendant declared he was unable to pay the outstanding fines and requested that they be converted into additional prison time in the form of a concurrent sentence. Each motion was heard by a different superior court judge, and all three were denied in separate orders. Defendant filed a timely notice of appeal as to all three orders.

DISCUSSION

Defendant's court-appointed counsel filed an opening brief that summarizes the relevant procedural history of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief, but has not done so. We decline to accord review under *Wende* and dismiss the appeal because, as explained in *Turrin, supra*, 176 Cal.App.4th 1200, the orders denying defendant's postjudgment motions are not appealable.

In *Turrin, supra*, 176 Cal.App.4th 1200, defendant filed a motion to modify restitution fines "10 months after judgment was entered, when he was serving his sentence in state prison." (*Id.* at p. 1203.) "Defendant argued that there was insufficient

evidence that he had the ability to pay the fines.” (*Ibid.*) The appellate court concluded that the trial court lacked jurisdiction to modify the restitution fines after execution of sentence had begun, and therefore the order denying the motion was not appealable. (*Id.* at p. 1208.) As the court explained, generally trial courts lack jurisdiction to resentence a criminal defendant after execution of sentence has begun. (*Id.* at p. 1204.) There are few exceptions to this rule: (1) the “trial court may recall the sentence on its own motion within 120 days after committing a defendant to prison” under section 1170, subdivision (d); (2) the “trial court may correct a clerical error, but not a judicial error, at any time”; and (3) “an unauthorized sentence may be corrected at any time.” (*Id.* at pp. 1204-1205.)

None of these exceptions applied in *Turrin*. First, the trial court “did not recall the sentence on its own motion and had no statutory authority to do so since section 1170, subdivision (d), requires the trial court to act within 120 days.” (*Turrin, supra*, 176 Cal.App.4th at p. 1206.) Second, the defendant “did not seek correction of clerical error but instead he claimed judicial error.” (*Ibid.*) Finally, the court explained that “[a] defendant may not contest the amount, specificity, or propriety of an authorized order of a restitution fine for the first time on appeal [citations] let alone in a motion to modify the same in the trial court after it has lost jurisdiction. Defendant is contesting the amount and propriety of an authorized order of a restitution fine. Section 1202.4, subdivision (b), authorized the amounts imposed here. And defendant’s motion raised a factual question about his ability to pay, not a pure question of law. The unauthorized-sentence exception to loss of jurisdiction does not apply here.” (*Id.* at p. 1207.)

The *Turrin* court dismissed the appeal: “Section 1237, subdivision (b), provides that a defendant may appeal ‘[f]rom any order made after judgment, affecting the substantial rights of the party.’ Since the trial court lacked jurisdiction to modify the restitution fines, its order denying defendant’s motion requesting the same did not affect his substantial rights and is not an appealable postjudgment order. [Citation.] The appeal should be dismissed. [Citation.]” (*Turrin, supra*, 176 Cal.App.4th at p. 1208; accord, *People v. Mendez* (2012) 209 Cal.App.4th 32, 32-34 [dismissing appeal after defendant filed similar motion to reduce restitution fines more than three years after execution of sentence had begun].)

Here, as in *Turrin*, none of the exceptions to the lack of jurisdiction applies. Defendant filed his motions between five and 15 years after execution of his sentences had begun in the three separate cases. Defendant’s sentences were not recalled within 120 days under section 1170, subdivision (d). Defendant did not seek to correct a clerical error. Finally, the restitution fines were authorized by sections 1202.4, subdivision (b) and 1202.45. Because defendant’s motions contested “the amount and propriety of an authorized order of a restitution fine[,] . . . [t]he unauthorized-sentence exception to loss of jurisdiction does not apply here.” (*Turrin, supra*, 176 Cal.App.4th at p. 1207.) Because the superior court lacked jurisdiction to modify the restitution fines, the orders denying defendant’s motions did not affect his substantial rights and were not appealable postjudgment orders. (*Id.* at p. 1208.) We therefore dismiss the appeal.

DISPOSITION

The appeal is dismissed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.