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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.

JEFFREY BAIDA,

Defendant and Appellant.

B252863

(Los Angeles County
Super. Ct. No. PA058834)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cynthia L. Ulfig, Judge. Dismissed.

Jill Ishida, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On October 4, 2013, defendant Jeffrey Baida filed a motion for modification of his sentence pursuant to Penal Code section 1170, subdivision (d). The trial court denied defendant's motion on October 17, 2013. Defendant filed his notice of appeal on November 18, 2013, purporting to appeal from the post-judgment October 17, 2013 order.

On December 26, 2013, we issued an order to show cause directing defendant to show cause in writing why his appeal should not be dismissed. On January 30, 2014, defendant's counsel stated she had no further information to provide the court. The Attorney General responded by requesting dismissal of the appeal. We concur.

Under Penal Code section 1237, defendant may appeal from a final judgment of conviction or from a post-judgment order affecting his substantial rights. Because defendant had no standing to bring the motion under Penal Code section 1170, subdivision (d), the denial of his motion could not have affected his substantial rights. (*People v. Pritchett* (1993) 20 Cal.App.4th 190, 194; *People v. Chlad* (1992) 6 Cal.App.4th 1719, 1725; *People v. Gainer* (1982) 133 Cal.App.3d 636, 641; *People v. Druschel* (1982) 132 Cal.App.3d 667, 669; *People v. Niren* (1978) 76 Cal.App.3d 850, 851; see *Thomas v. Superior Court* (1970) 1 Cal.3d 788, 790; see *People v. Thomas* (1959) 52 Cal.2d 521, 527; see 6 Witkin & Epstein, Cal. Criminal Law (4th ed. 2012) "Criminal Appeals," § 65, pp. 341-342.) Thus, an order denying defendant's request to modify his sentence pursuant to Penal Code section 1170, subdivision (b) is not appealable.

DISPOSITION

The appeal is dismissed.

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TURNER, P. J.

We concur:

KRIEGLER, J.

MINK, J.*

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.