

Filed 11/3/16 P. v. Magana CA2/5

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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.

ERICK ALEXANDER MAGANA,

Defendant and Appellant.

B271760

(Los Angeles County  
Super. Ct. No. BA164867)

APPEAL from a judgment of the Superior Court of Los Angeles County, Bernie C. Lafortheza, Judge. Dismissed.

Jennifer Hansen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Plaintiff, Erick Alexander Magana, appeals from the denial of his motion to vacate the judgment challenging the validity of his conviction for second degree murder on a natural and probable consequence theory. We previously affirmed the judgment of conviction. (*People v. Magana* (Mar. 2, 2005, B127481) [nonpub. opn.].) Plaintiff asserts the appeal is pursuant to Penal Code section 1237, subdivision (b), which provides: “An appeal may be taken by the defendant from . . . : [¶] . . . [¶] **(b)** From any order made after judgment, affecting the substantial rights of the party.” Plaintiff is in effect challenging his judgment of conviction.

The denial of a motion to vacate the judgment is ordinarily nonappealable. (*People v. Banks* (1959) 53 Cal.2d 370, 378; *People v. Gallardo* (2000) 77 Cal.App.4th 971, 980-981; see *People v. Totari* (2002) 28 Cal.4th 876, 886.) We issued an order to show cause why this appeal should not be dismissed. Plaintiff in response argued that he should not have been convicted. Plaintiff requests counsel be appointed to review the facts of his case.

Defendant has failed to demonstrate how we have jurisdiction over this appeal. Defendant is appealing the denial of his motion to vacate the judgment. But the gravamen of his claim is a challenge to the judgment. As to his request for appointment of counsel, we have already appointed an attorney to represent defendant.

The appeal is dismissed.

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TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.