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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE GENE JOHNSON,

Defendant and Appellant.

B265665

(Los Angeles County  
Super. Ct. No. MA027000)

APPEAL from an order of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Ronnie Gene Johnson appeals from a post-judgment order denying his motion to reduce the restitution fine he was ordered to pay as part of his sentence in 2006. Because the trial court had no jurisdiction to modify the sentence as requested, the postjudgment order is nonappealable. We therefore dismiss the appeal.

### **PROCEDURAL HISTORY**

In April 2006, Johnson was sentenced after being convicted, pursuant to a plea agreement, of one count of second degree robbery (Pen. Code, § 211)<sup>1</sup> with a firearm-use enhancement (§ 12022.53, subd. (b)). As a second strike offender (§§ 667, subds. (b)-(i), 1170.12), Johnson received a 20-year state prison term (five years doubled plus 10 years for the enhancement). Pursuant to section 1202.4, subdivision (b), the trial court imposed a restitution fine in the amount of \$4,000, and pursuant to section 1202.45, the court stayed a parole revocation restitution fine in the amount of \$4,000. The reporter's transcript is not part of the record on appeal, but nothing in the minute orders of the plea and sentencing hearing suggests that Johnson objected to the amount of the restitution fine or requested a hearing on his ability to pay it.<sup>2</sup>

On May 1, 2015, Johnson filed in the trial court an "Ex-Parte Application and Motion of Waiver of Restitution or Fine," arguing that the sentencing court erred by imposing the \$4,000 restitution fine without considering his ability to pay. He moved to reduce the fine to \$200. In a written decision, the trial court denied his motion, finding that "the restitution order appears appropriate in light of the nature of the crime and the prison term imposed." Johnson filed a timely notice of appeal.

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<sup>1</sup> Statutory references are to the Penal Code.

<sup>2</sup> Failure to object to the fine amount at the time of sentencing generally results in forfeiture of the issue. (*People v. Nelson* (2012) 51 Cal.4th 198, 227 [finding forfeiture because "defendant could have objected at the time if he believed inadequate consideration was being given to [the ability to pay] factor"], fn. omitted; *People v. Gamache* (2010) 48 Cal.4th 347, 409 [finding that defendant "forfeited this claim by failing to object at his sentencing hearing"].)

We appointed counsel to represent Johnson on this appeal. After examining the record, counsel filed an opening brief raising no issues. On October 14, 2015, we advised Johnson he had 30 days to submit any issues he wished us to consider. We have received no response.

### **DISCUSSION**

We have examined the entire record and are satisfied that Johnson's appellate attorney has fully complied with the responsibilities of counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

Indeed, the trial court could not have granted the relief Johnson requested. By the time Johnson filed his motion to reduce the restitution fine amount, the trial court had no jurisdiction to modify his sentence. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1206 ["[T]he trial court had lost jurisdiction [to entertain a motion to reduce the restitution fine amount]; none of the exceptions applies. The court did not recall the sentence on its own motion and had no statutory authority to do so since [§] 1170, [subd.] (d), requires the trial court to act within 120 days. [The d]efendant did not seek correction of clerical error but instead he claimed judicial error."].)

In this circumstance, we must dismiss the appeal because the trial court's order denying the motion is not appealable. (*People v. Turrin, supra*, 176 Cal.App.4th at p. 1208 ["[§] 1237, [subd.] (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."]; see also *People v. Mendez* (2012) 209 Cal.App.4th 32, 34 [applying *Turrin* and dismissing appeal].)

**DISPOSITION**

The appeal is dismissed.

BLUMENFELD, J.\*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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