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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN C. SUAREZ,

Defendant and Appellant.

B282487

Los Angeles County

Super. Ct. No. BA203308

APPEAL from a postjudgment order of the Superior Court of Los Angeles County, Drew E. Edwards, Judge. Appeal dismissed.

Victoria H. Stafford, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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## INTRODUCTION

Defendant Juan C. Suarez appeals from an order denying his motion to reduce or vacate a restitution fine that was imposed in 2001. His 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*). Since defendant has appealed from a nonappealable order, we dismiss the appeal. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1208 (*Turrin*).)

## BACKGROUND

After defendant was convicted of eight felonies, the trial court sentenced him in 2001 to a total term of 109 years to life in prison. The court also ordered him to pay a \$10,000 restitution fine under Penal Code<sup>1</sup> section 1202.4, subdivision (b). In an opinion filed in 2003, this court modified the judgment to reflect additional presentence custody credits and, as modified, affirmed the judgment. (*People v. Suarez* (April 24, 2003, B154553 [nonpub. opn.].)

In March 2017, defendant filed a “Motion to Modify Sentence and to Reduce and or Vacate Restitution Fine (Pursuant to Penal Code section 1202.4(f)).” Although defendant cited subdivision (f) of section 1202.4, which requires that a defendant make restitution to the victim, the record shows that the sentencing court did not order victim restitution under subdivision (f); the court imposed the \$10,000 restitution fine under section 1202.4, subdivision (b). Defendant contended that the court that sentenced him in 2001 erred by not taking into

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<sup>1</sup> All further statutory references are to the Penal Code.

consideration his ability to pay the \$10,000 restitution fine. After the court denied defendant's motion, he appealed from that order.

## 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*, the order denying defendant's postjudgment motion is 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 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 p. 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 motion more than 15 years after execution of his sentence had begun. His sentence was not recalled within 120 days under section 1170, subdivision (d). Defendant did not seek to correct a clerical error. Finally, the \$10,000 restitution fine was authorized by section 1202.4, subdivision (b). Because defendant's motion 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 trial court lacked jurisdiction to modify the restitution fine, the order denying defendant's motion did not affect his substantial rights and is not an appealable postjudgment order. (*Id.* at p. 1208.) We therefore dismiss the appeal.

### **DISPOSITION**

The appeal is dismissed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

CURREY, 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.