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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

SAMAEL GOMEZ,

Defendant and Appellant.

B281229

(Los Angeles County
Super. Ct. No. BA292935)

APPEAL from an order of the Superior Court of Los Angeles County, Michael D. Abzug, Judge. Dismissed.

Barbara Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * * * *

Defendant Samael Gomez purports to appeal from the denial of his motion to modify his criminal judgment entered in 2006. The order is not appealable, and the appeal therefore is dismissed.

BACKGROUND

Defendant was convicted of willful, deliberate, and premeditated attempted murder. Jurors found that he personally used a deadly and dangerous weapon and that he personally inflicted great bodily injury on the victim in circumstances involving domestic violence. Defendant also was convicted of aggravated mayhem with a personal use of a deadly weapon enhancement. Judgment was imposed June 19, 2006.

In 2008, this court affirmed the judgment. (*People v. Gomez* (Feb. 27, 2008, B192517) [nonpub. opn.].) Defendant's 2008 and 2009 petitions for habeas corpus were denied.

In October 2016, defendant filed a motion to modify his sentence.

The court summarily denied defendant's motion, apparently deeming it a petition for writ of habeas corpus. On January 31, 2017, defendant filed a notice of appeal from his "motion for modification of sentence." (Boldface and capitalization omitted.) His appointed counsel filed a brief identifying no issues and requesting that this court independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Defendant filed a supplemental brief arguing that his sentence should be modified. The relief he requested was a "modification of sentence." (Boldface and capitalization omitted.)

DISCUSSION

The order denying a motion to modify a judgment in a criminal case is not appealable, and the appeal must be dismissed. (*People v. Cantrell* (1961) 197 Cal.App.2d 40, 45; see *People v. Mendez* (2012) 209 Cal.App.4th 32, 34.)

It appears that the trial court may have deemed Gomez's motion for modification to be a petition for writ of habeas corpus. To the extent defendant is appealing an order denying his petition for writ of habeas corpus, that order also is not appealable. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

DISPOSITION

The appeal is dismissed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.