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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.

JUAN CARLOS SANTANA,

Defendant and Appellant.

B296399

(Los Angeles County  
Super. Ct. No. KA115259)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert M. Martinez, Judge. Dismissed.

Brad Kaiserman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Juan Carlos Santana was convicted of second-degree murder, burglary, and receiving stolen property. We affirmed his convictions in a separate appeal and remanded for resentencing on certain matters. (*People v. Santana* (July 30, 2019, B286320) [nonpub. opn.].) He now appeals the trial court's denial of his motion to strike an order of \$4,490.27 in victim restitution entered at the time of his sentencing. Appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Santana filed a supplemental brief essentially contending the restitution fine was not supported by actual losses. Because the order was not appealable, we dismiss the appeal.

### **PROCEDURAL BACKGROUND**

We recited the extensive facts of this case in Santana's first appeal and do not repeat them here, as they are not pertinent to the current appeal. After a jury trial, Santana was found guilty of second-degree murder, burglary, and receiving stolen property, and the jury found several firearm enhancements true. At a sentencing hearing held on October 25, 2017, he was sentenced to 43 years to life. The trial court stated an order was submitted requesting victim restitution in the amount of \$4,490.27, and when asked if Santana wished to be heard, Santana's counsel submitted on the matter. The court signed the restitution order in that amount plus 10 percent annual interest. Santana did not challenge the restitution order in his first appeal.

Over 14 months later, on January 7, 2019, Santana filed a pro per motion to strike the order of restitution, claiming it was not supported by evidence of economic losses. The court denied the motion, finding Santana failed to show good cause to strike

the order because “there is no substantial right the defendant is attempting to enforce.” Santana appealed.

### DISCUSSION

We appointed counsel to represent Santana on appeal. Appointed counsel filed an opening brief pursuant to *Wende, supra*, 25 Cal.3d 436, arguing the order was appealable but requesting independent review of the record on appeal for arguable issues. We then notified Santana by letter that he could submit any claim, argument, or issues that he wished our court to review. In response, Santana filed a letter brief essentially contending the restitution order was not supported by proof of actual losses.

The appeal must be dismissed because the court’s order was beyond the trial court’s jurisdiction and was therefore not appealable. “[G]enerally a trial court lacks jurisdiction to resentence a criminal defendant after execution of sentence has begun. [Citation.]’ [Citations.] There are a few exceptions to the rule. [¶] [Penal Code] [s]ection 1170, subdivision (d), provides, in relevant part, that a trial court may recall the sentence on its own motion within 120 days after committing a defendant to prison. [Citation.] Section 1170, subdivision (d), does not authorize a defendant to file a motion to recall the sentence. [Citation.] [¶] A trial court may correct a clerical error, but not a judicial error, at any time.” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204–1205 (*Turrin*).) “Also, an unauthorized sentence may be corrected at any time.” (*Id.* at p. 1205.)

None of these exceptions apply to confer jurisdiction over Santana’s motion to strike. Santana sought to strike the restitution order on the ground that there was no evidence of actual losses. He did not raise that contention at the time the

restitution order was imposed, and in fact his counsel submitted on the matter at the sentencing hearing. He also did not raise this issue in his initial appeal from his convictions and sentence. Nothing in the record demonstrates a clerical error in the rendition of this order or that it was legally unauthorized.

Penal Code section 1237, subdivision (b) provides that an appeal may be taken “[f]rom any order made after judgment, affecting the substantial rights of the party.” Because the trial court was without jurisdiction to grant Santana’s motion to strike the restitution order, the order denying his motion did not affect his substantial rights. (*People v. Littlefield* (2018) 24 Cal.App.5th 1086, 1092 [trial court lacked jurisdiction to vacate victim restitution order, so order did not affect substantial rights and was not appealable]; accord *Turrin, supra*, 176 Cal.App.4th at p. 1208 [because trial court lacked jurisdiction to modify restitution fine, its “order denying defendant’s motion requesting the same did not affect his substantial rights and [was] not an appealable postjudgment order”]; *People v. Mendez* (2012) 209 Cal.App.4th 32, 34 [order denying motion to reduce restitution fine to legal minimum filed more than three years after execution of sentence was not appealable].)

### **DISPOSITION**

The appeal is dismissed.

BIGELOW, P.J.

We concur:

GRIMES, J.      STRATTON, J.