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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN MARK PICART,

Defendant and Appellant.

2d Crim. No. B298655  
(Super. Ct. No. TA093015)  
(Los Angeles County)

In May 2009, a jury convicted Stephen Mark Picart of first degree murder of his girlfriend and second degree murder of her fetus. (Pen. Code,<sup>1</sup> §§ 187, subd. (a), 189.) The trial court sentenced Picart to life without parole, plus 65 years to life (15 years-to-life for second degree murder and two consecutive 25 years-to-life enhancements pursuant to section 12022.53, subdivision (d)). The court imposed various fines and fees including a restitution fine of \$200 (§ 1202.4, subd. (b)) and

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<sup>1</sup> Further unspecified statutory references are to the Penal Code.

victim's restitution of \$17,007.33 (§ 1202.4, subd. (f)). In a prior appeal filed in April 2010, we affirmed the conviction. (*People v. Picart* (Apr. 8, 2010, B216448) [nonpub. opn.]<sup>2</sup>

In March 2019, Picart filed a "Motion to Vacate an Illegal . . . Conviction, and Sentence for Lack of Subject Matter Jurisdiction," in which he argued that he was denied a hearing on his competency to stand trial and that his trial counsel was ineffective. The trial court deemed the motion a petition for writ of habeas corpus and denied the petition. Picart filed a notice of appeal.

In April 2019, Picart filed a "Motion for Restitution Hearing for Reconsideration of Ability to Pay" in which he sought an ability to pay hearing on his restitution fine and the victim's restitution. The trial court denied the motion, and Picart filed another notice of appeal.

Counsel, who was appointed to represent Picart in this appeal taken from both orders, filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, raising no arguable issues. On November 14, 2019, we advised Picart by mail that he had 30 days within which to submit any contentions or issues he wished us to consider. We received his briefs filed on November 25, 2019, and December 10, 2019.

We have reviewed the entire record and Picart's briefs. We conclude that we must dismiss the appeal because neither order is appealable. The right to a direct appeal is wholly dependent on statute. (*People v. Garrett* (1998) 67 Cal.App.4th 1419, 1421 (*Garrett*)). A defendant may appeal from a final

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<sup>2</sup> We grant Picart's unopposed request to take judicial notice of the record in his prior appeal (2d Crim. Case No. B216448). (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

judgment of conviction or from any order after judgment which affects his or her substantial rights. (§ 1237.)

The trial court correctly construed the March 2019 motion to vacate as a petition of writ of habeas corpus. An order denying a writ of habeas corpus is not an appealable order. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7 [order denying a petition for writ of habeas corpus is not an appealable order]; *Garrett, supra*, 67 Cal.App.4th at pp. 1421-1422 [denial of defendant's petition for writ of habeas corpus was not reviewable as an order made after judgment, affecting defendant's substantial rights].)

With respect to the April 2019 motion, Picart sought an ability to pay hearing on his restitution fine and victim's restitution pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*). The judgment of conviction became final long before *Dueñas* was decided. (See *Griffith v. Kentucky* (1987) 479 U.S. 314, 328 ["[A] new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past"]; *People v. Castellano* (2019) 33 Cal.App.5th 485, 491 [remand for ability to pay hearing where conviction and sentence were "not yet final"].) We affirmed the conviction and issued a remittitur on June 29, 2010. The judgment of conviction became final on September 27, 2010, which was the last day Picart could have filed a petition for writ of certiorari. (*People v. Vieira* (2005) 35 Cal.4th 264, 306 ["judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed"].) Therefore, the trial court lacked jurisdiction to grant Picart's motion. (See *People v. Chlad* (1992) 6 Cal.App.4th 1719, 1725-1726.) As denial of his motion could not

have affected Picart's substantial rights, the April 2019 order denying his motion for an ability to pay hearing is not an appealable order. (*Ibid.*)

The appeal is dismissed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Michael Shultz, Judge

Superior Court County of Los Angeles

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Joanna McKim, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.