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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE CHRISTIAN REGALADO,

Defendant and Appellant.

H053648

(Monterey County
Super. Ct. No. SS150087A)

Following his no contest pleas and sentencing in 2016, defendant Jose Christian Regalado petitioned the trial court for relief concerning amendments to Penal Code sections 186.22 and 1170.18.¹ The trial court denied the request, concluding Regalado was not entitled to relief under either provision.

On appeal, Regalado's appointed counsel has filed a brief pursuant to *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*) that states the case and facts but raises no issues. This court notified Regalado of his right to submit written argument on his own behalf within 30 days. Regalado provided a submission asserting the trial court's denial of his petition violated his due process and equal protection rights and constituted an abuse of discretion.

We conclude the trial court lacked jurisdiction to grant Regalado's requests. Therefore, we lack jurisdiction over this appeal and we will dismiss it.

¹ Unspecified statutory references are to the Penal Code.

I. PROCEDURAL BACKGROUND²

In 2016, Regalado pleaded no contest pursuant to a plea agreement to assault with a firearm (§ 245, subd. (a)(2)) and assault by means of force likely to produce great bodily injury (*id.*, subd. (a)(4)). With respect to the assault with a firearm count, Regalado admitted enhancements that he personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)), he committed the offense for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(B)), and he personally used a firearm (§ 12022.5, subd. (a)). The trial court imposed the stipulated sentence of 21 years in prison.

In August 2025, Regalado filed a “Motion for Resentencing Pursuant to Assembly Bill (AB)-333.” The motion did not substantively state why Regalado was entitled to relief under this measure. In a short handwritten note included with the motion, Regalado summarily asserted he was entitled to relief based on the Legislature’s intent expressed in Assembly Bill No. 333 (2021-2022 Reg. Sess.) (Assembly Bill 333) that the prison population should be reduced. In the same filing, Regalado submitted a petition for relief citing section 1170.18, subdivisions (a) and (f), asking for recall and resentencing and for his convictions to be reduced to misdemeanors.

The trial court denied both requests in a written order. With regard to Regalado’s motion citing Assembly Bill 333, the trial court stated: “The defendant’s judgment of conviction became final long before Assembly Bill 333 became effective in 2022. Consequently, the defendant is not entitled to the ameliorative benefits of Assembly Bill 333. The motion for resentencing pursuant to Assembly Bill 333 is respectfully denied.” As to Regalado’s request citing section 1170.18, the trial court stated Regalado did not meet the criteria for relief because he was not convicted of an offense listed in the statute.

² The facts of the offenses are immaterial to our analysis. On this court’s own motion, we take judicial notice of our opinion in *People v. Regalado* (Oct. 1, 2025, H052924) [nonpub. opn.] to supply a brief initial procedural history of this matter.

Regalado timely filed a notice of appeal.

II. DISCUSSION

We have carefully examined the entire record and have determined that the trial court's order denying Regalado's requests is not appealable. Thus, we lack jurisdiction to consider the arguments raised by Regalado in his supplemental brief.

The Legislature passed Assembly Bill 333 effective January 1, 2022. (Stats. 2021, ch. 699.) "Assembly Bill 333 essentially adds new elements to the substantive offense and enhancements in section 186.22—for example, by requiring proof that gang members 'collectively engage' in a pattern of gang activity, that the predicate offenses were committed by gang members, that the predicate offenses benefitted the gang, and that the predicate and underlying offenses provided more than a reputational benefit to the gang" (*People v. E.H.* (2022) 75 Cal.App.5th 467, 479.) In *People v. Lopez* (2025) 17 Cal.5th 388, 394, the California Supreme Court concluded that "Assembly Bill 333 added new elements to the substantive offense and enhancements in the gang statute, and its substantive changes apply retroactively to all nonfinal cases" However, as the trial court here concluded, Regalado's case was final before Assembly Bill 333 took effect. "Where a defendant whose conviction is final files a statutorily unauthorized 'freestanding' petition, both the court below and this court lack jurisdiction to consider the arguments raised therein; thus, the appeal must be dismissed. [Citations.]" (*People v. Garcia* (2025) 114 Cal.App.5th 139, 144.) The trial court properly concluded it could not provide the relief Regalado requested because Regalado's conviction was final before Assembly Bill 333 took effect, and we lack jurisdiction to consider Regalado's appeal on this issue.

As for the other portion of Regalado's request to the trial court, section 1170.18 provides for recall of a sentence when a felony offense is amended to be a misdemeanor. Section 1170.18 was enacted in 2014. (Prop. 47, § 14, as approved by voters, Gen. Elec. (Nov. 4, 2014).) Subdivision (a) states that a person who was serving a sentence on

November 5, 2014 for a conviction of one or more of the following code provisions that were formerly felony offenses may petition for a recall of sentence and resentencing: Health and Safety Code sections 11350, 11357, and 11377, and Penal Code sections 459.5, 473, 476a, 490.2, 496, and 666. If a petitioner satisfies the subdivision (a) criteria, the petitioner’s felony sentence shall be recalled and the petitioner shall be resentenced to a misdemeanor “unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.” (§ 1170.18, subd. (b).) Subdivision (f) states: “A person who has completed their sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in their case to have the felony conviction or convictions designated as misdemeanors.” Section 1170.18 “reflects a determination that the ‘former penalty was too severe’ and that the ameliorative changes are intended to ‘apply to every case to which it constitutionally could apply,’ which would include those ‘acts committed before its passage[,] provided the judgment convicting the defendant of the act is not final.’ [Citation.]” (*People v. Buycks* (2018) 5 Cal.5th 857, 881.)

Regalado pleaded no contest in 2016, after the effective date of this measure, and was not serving a sentence on November 5, 2014, for conviction of a felony that would have been a misdemeanor under the act. (§ 1170.18, subd. (a).) His convictions for assault with a firearm (§ 245, subd. (a)(2)) and assault by means of force likely to produce great bodily injury (*id.*, subd. (a)(4)) are not offenses listed as eligible for relief under section 1170.18. Because section 1170.18 does not apply to Regalado, the trial court lacked jurisdiction to grant relief. We likewise lack jurisdiction to consider Regalado’s appeal on this issue.

“The right to appeal is statutory only, and a party may not appeal a trial court’s judgment, order or ruling unless such is expressly made appealable by statute.” (*People*

v. Loper (2015) 60 Cal.4th 1155, 1159.) Regalado asserts jurisdiction exists for his appeal under section 1237.5, subdivision (b) because the trial court's order affected his substantial rights. However, "[a] trial court order denying relief that the court has no jurisdiction to grant does not affect a defendant's substantial rights and is therefore not appealable under section 1237, subdivision (b)." (*People v. King* (2022) 77 Cal.App.5th 629, 639.) Regalado's 2016 conviction was final at the time of his 2025 petition, and neither section 186.22 nor section 1170.18 provided a basis for him to seek relief. The trial court lacked jurisdiction to act upon both components of Regalado's request, and we lack jurisdiction to consider Regalado's appeal on these issues. Accordingly, we will dismiss the appeal.

III. DISPOSITION

The appeal is dismissed.

Greenwood, P. J.

WE CONCUR:

Danner, J.

Bromberg, J.

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