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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.

JOSE MARIO GONZALEZ,

Defendant and Appellant.

B344742

(Los Angeles County
Super. Ct. No. TA086842-01)

APPEAL from an order of the Superior Court of Los Angeles County, Robert G. Chu, Judge. Appeal dismissed.

Susan Wolk, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to *People v. Delgadillo* (2022) 14 Cal.5th 216, we review an order denying Jose Gonzalez’s motion for resentencing brought under Penal Code¹ section 1172.1. Because we find the order is not appealable, we dismiss the appeal

BACKGROUND

On January 22, 2008, a jury found Gonzalez guilty of three counts of attempted willful, deliberate and premeditated murder in violation of sections 664 and 187, subdivision (a); three counts of assault with a firearm in violation of section 245, subdivision (a)(2); accessory after the fact in violation of section 32; and evading an officer in violation of Vehicle Code section 2800.2, subdivision (a). The jury also found true firearm and gang enhancements attached to several of the charges. On June 5, 2008, the trial court dismissed the accessory after the fact conviction in the interest of justice and sentenced Gonzalez to 112 years to life in prison.

On October 18, 2024, the trial court received from Gonzalez a “Request For Recall of Sentence and Resentencing Pursuant to Assembly Bill 600 and Penal Code Section 1172.1.” Gonzalez argued he was 20 years old at the time of his arrest, has matured in prison, and takes responsibility for his actions. He asked the court to resentence him to lesser included charges so that he can be with his family in the country of Colombia.

On January 21, 2025, the trial court denied the request, stating, “The court is without jurisdiction to modify the sentence of the defendant.” Additionally, “The court finds no legal basis to resentence the Petitioner and no further action will be taken at

¹ Undesignated statutory references are to the Penal Code.

this time. [¶] The petition for resentencing is DENIED.”
Gonzalez timely appealed.

We appointed counsel to represent Gonzalez on appeal. On October 28, 2025, counsel filed a no issue brief pursuant to *People v. Delgadillo*. Counsel advised us they told Gonzalez he could file his own supplemental brief within 30 days and they sent him transcripts of the record on appeal and a copy of the brief.

On October 31, 2025, we sent Gonzalez notice that his counsel had filed a no issue brief on his behalf. We advised Gonzalez that he may, within 30 days, submit a supplemental brief or letter stating any grounds for an appeal, contentions or arguments that he wishes this court to consider. We also advised Gonzalez that if no supplemental brief or letter is timely filed the court may dismiss the appeal as abandoned.

On November 21, 2025, Gonzalez filed a supplemental letter brief. He contends the trial court imposed illegal sentences with respect to the attempted murder convictions and the gang and firearm enhancements. He also contends the jury was illegally kept in the dark about the length of the sentences he faced and the district attorney’s office was biased because it never offered him a plea deal.

DISCUSSION

I. Section 1172.1—the Recall and Resentencing Statute

Section 1172.1 endows a trial court with authority to recall the sentences of incarcerated defendants and resentence them under certain circumstances. Like its predecessor provisions, section 1172.1 is a statutory exception to the general rule that “‘once a judgment is rendered and execution of the sentence has begun, the trial court does not have jurisdiction to vacate or

modify the sentence.’” (*People v. King* (2022) 77 Cal.App.5th 629, 637–638.)

Under section 1172.1, a trial court may recall and resentence “at any time” upon the recommendation of the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case. (§ 1172.1, subd. (a)(1).) Until recently, the statute also provided that a trial court may recall and resentence “on its own motion” within 120 days of the date of commitment. Effective January 1, 2024, the 120-day provision was expanded. Now a trial court may recall a sentence and resentence a defendant on its own motion “at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law.” (*Ibid.*; Assem. Bill No. 600 (2023–2024 Reg. Sess.).) Once a trial court decides to recall and resentence, it may either reduce the sentence by modification or vacate the conviction and impose judgment on “any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleadings.” (§ 1172.1, subd. (a)(3).)

Notably, section 1172.1, by its terms, denies a defendant the right to petition the court for recall and resentencing. (§ 1172.1, subd. (c) [“[a] defendant is not entitled to file a petition seeking relief from the court under this section,” and “[i]f a defendant requests consideration for relief under this section, the court is not required to respond.”].) As to a right to appeal, the statute provides: “After ruling on a referral authorized by this

section, the court shall advise the defendant of their right to appeal.” (*Id.*, subd. (d).)

II. The Right to Appeal Generally

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. (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 598.) Criminal defendants are entitled to appeal from “any order made after judgment, affecting the substantial rights of the party.” (§ 1237, subd. (b).)

III. The Definition of “Substantial Rights”

Our Supreme Court has not provided “a comprehensive interpretation of the term ‘substantial rights’ as used in section 1237, subdivision (b).” (*People v. Loper* (2015) 60 Cal.4th 1155, 1161, fn. 3 (*Loper*)). But *Loper* did discuss how to approach formulating a definition. There, the court addressed the question whether a defendant has the right to appeal a trial court’s denial of a request for compassionate release properly made by the Secretary of the Department of Corrections and Rehabilitation under section 1170, former subdivision (e). That statute is similar to section 1172.1 in that both statutes do not give defendants the right to make a request for relief themselves. For relief under section 1170, only the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings may make such a request. (§ 1170, former subd. (e).)

In deciding that the denial of a request for compassionate release affects substantial rights, our Supreme Court in *Loper* noted: “Although the defendant has no independent right to initiate compassionate release proceedings in the trial court, the Secretary [of the Department of Corrections and Rehabilitation]

evaluated defendant's medical condition and made a recommendation for compassionate release on his behalf. By providing a mechanism for releasing eligible prisoners from custody, section 1170[, former subdivision] (e) implicates a prisoner's substantial interest in personal liberty. Moreover, although section 1170[, former subdivision] (e) authorizes the trial court to exercise discretion whether to release a prisoner for compassionate reasons, the statute also establishes clear eligibility criteria (§ 1170[, former subd.] (e)(2)), suggesting that discretion is not unfettered when evidence is presented satisfying the statutory criteria. These factors lead us to conclude the trial court's ruling clearly affected defendant's substantial rights for purposes of section 1237, subdivision (b)." (*Loper, supra*, 60 Cal.4th at p. 1161, fn. 3.)

We glean from this footnote that the combination of three factors illuminates whether a defendant's substantial rights in personal liberty are implicated: 1) the Legislature sets up a mechanism for releasing eligible prisoners from custody; 2) that mechanism is used to get the issue of release from custody before the trial court; and 3) that mechanism includes a list of eligibility statutory criteria that must then be followed by the trial court in making its ruling, suggesting that the trial court's discretion is not unfettered. We also glean from the extended discussion in *Loper* on standing that whether or not the defendant has the express right to initiate the request for sentencing relief is immaterial to determining whether substantial rights are affected. (See *Loper, supra*, 60 Cal.4th at pp. 1161–1165 [defendant may appeal an adverse decision on a postjudgment motion or petition if it affects substantial rights, even if someone else brought the original motion].)

Keeping these three factors in mind, we hold that section 1172.1 does not implicate a defendant's substantial rights where, as here, a defendant has personally filed a petition not authorized by statute. It is true that the Legislature created a mechanism for release, satisfying the first of the three criteria set out above. However, that mechanism, authorized for use by only designated entities or persons, was not followed in this case. Section 1172.1, subdivision (c) expressly provides: "A defendant is not entitled to file a petition seeking relief from the court under this section. If a defendant requests consideration for relief under this section, the court is not required to respond." The statute also expressly provides that where an *authorized* request for relief is denied, a defendant must be advised of their appellate rights, inferring a right to appeal a properly authorized request. (§ 1172.1, subd. (d).)

Here, Gonzalez filed an unauthorized request for relief to which the trial court was not obligated to respond. Thus, the second criterion—that the authorized mechanism be used to obtain the requested relief—has not been satisfied. This, we emphasize, stands apart from a standing analysis *per se*.

We also adopt the analysis of our colleagues in Division 2 who concluded that orders denying requests for relief from defendants personally, as opposed to those from authorized third parties, are not appealable. (*People v. Hodge* (2024) 107 Cal.App.5th 985.) As Presiding Justice Lui wrote, "[T]he second sentence of section 1172.1, subdivision (c) does undermine any claim that defendants have a substantial right at stake when they file an unauthorized request for resentencing. That sentence excuses the trial court from any responsibility to rule on such a request, or even to respond. It follows that a defendant

who chooses to file an unauthorized request for resentencing has no *right* to a ruling. The defendant may have a liberty interest at stake in any decision as to whether they should remain incarcerated. But a defendant has no right to demand that the trial court actually make such a decision. If the defendant has no right to a decision, the trial court's choice not to make one does not deprive the defendant any right, much less a substantial one." (*Id.* at p. 996.) Under *Hodge*, where a statute expressly relieves the court of any obligation to adjudicate a request for relief filed by defendants personally, it follows that defendants do not have a substantial right in this particular pathway toward resentencing. (*Ibid*; see also *People v. Faustinos* (2025) 109 Cal.App.5th 687, 697 (*Faustinos*) [order declining to act on defendant's unauthorized section 1172.1 petition not an appealable order]; *People v. Brinson* (2025) 112 Cal.App.5th 1040, 1047 [same]; *People v. Roy* (2025) 110 Cal.App.5th 991, 996 [same].)

We add that our analysis does not change where, as here, the trial court issued a potentially erroneous order finding it had no jurisdiction to consider the request and then denying it (instead of ignoring the request, as it was authorized to do). It is the Legislature's mechanism and the use of that mechanism that is paramount in deciding whether Gonzalez's fundamental rights are affected, not the format or content of the trial court's order. (*Faustinos*, *supra*, 109 Cal.App.5th at p. 698 [trial court's statements did not make a nonappealable order appealable, because appealability depends upon the nature of the decision made, not the court's justification for its ruling].)

We find the order denying Gonzalez's section 1172.1 petition is not an appealable order because Gonzalez did not

invoke the procedures mandated by the statute. We therefore do not address the merits of his supplemental brief.

We also decline to exercise our discretion to conduct an independent review of the record as permitted by *People v. Delgadillo*, *supra*, 14 Cal.5th at pages 231 to 232.

DISPOSITION

The appeal is dismissed.

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STRATTON, P. J.

We concur:

WILEY, J.

SCHERB, J.