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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRANCE JUAN ANDERSON,

Defendant and Appellant.

A169079/A171971

(Alameda County  
Super. Ct. No. 170037C)

In these consolidated appeals, defendant Terrance Juan Anderson appeals from orders denying his pro per motion to vacate his restitution fine (pro per motion) (Pen. Code,<sup>1</sup> § 1202.4) and his counsel's informal request to reduce that fine due to Anderson's purported inability to pay. We conclude that the trial court lacked jurisdiction to grant the motion or request because Anderson had already started to serve his sentence. Accordingly, the orders are not appealable and we will dismiss the appeals.

**I. FACTS AND PROCEDURAL BACKGROUND**

Anderson was convicted of first degree murder in 2013 and sentenced to 25 years to life in prison. His sentence also included a \$5,000 restitution

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

fine (§ 1202.4, subd. (b)), a corresponding \$5,000 parole revocation restitution fine (§ 1202.45, subd. (a)), and other fines and fees.

Anderson petitioned for resentencing under former section 1170.95 in March 2019. In January 2022, after much negotiation, the parties agreed to resolve the petition by changing specific terms of Anderson’s then-conviction and sentence. Anderson’s counsel represented that he and his client were “in total agreement” with the trial court’s proposition that, with the entry of the stipulated terms, Anderson was waiving “anything related, legal error, whatever, related to the facts, circumstances, and litigation of the charges in this case.” Counsel noted that he and Anderson had “discussed this already” and that they would “be waiving any right to raise [those issues] once again” even if there was a subsequent change in the law.

With that understanding, the trial court adjusted Anderson’s sentence as the parties had stipulated.<sup>2</sup> The court vacated Anderson’s murder conviction, redesignated it as voluntary manslaughter (§ 192, subd. (a)), added a robbery conviction (§ 211), resentenced him to a definite term of 16 years in prison, and increased his custody credits. No one at the hearing mentioned any change to the restitution fine, parole revocation restitution fine, or any other aspect of the original sentence. To the contrary, when the court asked if there was “[a]nything else” besides the changes that the court had stated on the record, the prosecutor responded that they had “covered everything.” Anderson’s counsel did not disagree.

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<sup>2</sup> The parties provided their written stipulation to the trial court, and the court referred to it at the resentencing hearing. The parties requested that the document be made part of the record, and the court agreed. The document does not appear in the clerk’s transcript, however. We granted Anderson’s motion to augment the record with the written stipulation, but the superior court clerk responded that it could not be located.

The trial court’s minute order recorded the new sentence and stated that “[a]ll previously imposed orders remain in full force and effect.” The amended felony abstract of judgment set forth the changed and unchanged sentence terms, including the continued imposition of the \$5,000 restitution fine and \$5,000 probation revocation restitution fine.

Over a year later in March 2023, Anderson moved in pro per “to vacate judgment of court ordered restitutions” due to an amendment to section 1465.9 that pertained to “court-ordered costs.” (§ 1465.9, subd. (b).) In so doing, Anderson acknowledged the order that he pay “[r]estitution[] per P.C. 1202.4(b) of [\$]5,000” as well as victim restitution. The trial court denied the motion as moot in August 2023 on the ground that restitution and restitution fines are not court-imposed costs within the meaning of section 1465.9. Anderson timely appealed (case No. A169079).

In July 2024, while his appeal was pending, Anderson’s appellate counsel sent a letter to the trial court, requesting correction of the restitution fine pursuant to section 1237.2.<sup>3</sup> Specifically, counsel asked the court to either reduce the fine based on Anderson’s inability to pay or set the matter for hearing, noting that the court had not mentioned the restitution fine at the 2022 resentencing hearing.

The trial court denied Anderson’s request in November 2024, concluding that it lacked authority to reduce the restitution fine because the parties’ stipulated agreement for resentencing had not reduced it. The court

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<sup>3</sup> Section 1237.2 provides: “An appeal may not be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines . . . unless the defendant first presents the claim in the trial court” within the time set forth in the statute. It also provides that “[t]he trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines . . . upon the defendant’s request for correction.” (§ 1237.2.)

explained: “Having done only that which was necessary to comply with the stipulated agreement of the parties, the court properly left the other orders that were part of the original judgment intact, including the previous orders imposing restitution fines.” The court found no error in the imposition or calculation of the fines and declined to hold an “ ‘ability to pay’ ” hearing. Anderson timely appealed (case No. A171971).

Effective January 1, 2025, while both appeals were pending, Assembly Bill No. 1186 (2023–2024 Reg. Sess.) amended section 1465.9 to provide relief from outstanding restitution fines imposed under section 1202.4. Section 1465.9, subdivision (d), now reads: “Upon the expiration of 10 years after the date of imposition of a restitution fine pursuant to Section 1202.4, the balance, including any collection fees, shall be unenforceable and uncollectible and any portion of a judgment imposing those fines shall be vacated.”

By letter to the trial court on April 15, 2025, Anderson (through appellate counsel) requested that the restitution fine be vacated pursuant to amended section 1465.9. Anderson claimed that the court had jurisdiction to vacate the restitution fine because (1) the portion of the sentence ordering a \$5,000 restitution fine is void and therefore the sentence, to that extent, is unauthorized; and (2) section 1237.2 gives a court jurisdiction to correct any error pointed out to the court concerning fines and fees during a pending appeal.<sup>4</sup> Anderson represented to the court that “[o]ne of the side benefits of [the court] issuing an order vacating the restitution fine will be that it will moot out the present appeals, and thus save the taxpayers the costs of such an appellate procedure.”

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<sup>4</sup> Anderson also requested relief based on the amendment to section 1465.9 in his supplemental opening brief in case No. A169079.

In June 2025, the trial court granted Anderson’s request and vacated “the balance, *if any*, of [Anderson’s] restitution fine as of January 1, 2025, pursuant to amended . . . [s]ection 1465.9.”

Meanwhile, we granted Anderson’s motion to consolidate his appeals (case Nos. A169079 and A171971).

## II. DISCUSSION

Anderson acknowledges that his appeals are moot as to any unpaid portion of the restitution fine vacated by the trial court in June 2025. But he argues that the appeals are not moot as to the restitution fine “in its entirety” and the corresponding parole revocation restitution fine. As to any portion of the restitution fine that he did pay, he contends the court erred by not reducing the fine at the 2022 resentencing hearing due to his inability to pay. He seeks a remand for that purpose. The People counter that the orders Anderson challenges are not appealable because the court lacked jurisdiction to grant the relief he sought. We agree that the orders are not appealable and dismiss the appeals.

With few exceptions, a trial court loses jurisdiction to resentence a defendant once the execution of his sentence has begun. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204 (*Turrin*).)<sup>5</sup> Accordingly, where the court has denied a defendant’s motion to reduce a restitution fine due to his alleged inability to pay after the defendant has started to serve his sentence, an

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<sup>5</sup> Exceptions to this rule arise where the trial court timely recalls the sentence on its own motion under section 1170.03, a specific statute authorizes resentencing, the purported error is clerical rather than judicial, or the defendant has filed a habeas petition. (*People v. King* (2022) 77 Cal.App.5th 629, 637 (*King*).) Anderson does not contend that any of these exceptions apply. As we will discuss, another possible exception arises where the sentence is unauthorized by law. (*Turrin, supra*, 176 Cal.App.4th at p. 1205; but see *King*, at p. 637.) Anderson urges that exception here.

appeal from that order must be dismissed. (*Id.* at pp. 1205–1208 [because the defendant had begun serving his prison sentence, the court lacked jurisdiction to reduce his restitution fine due to his alleged inability to pay, the order was not appealable, and the appeal was dismissed]; *People v. Mendez* (2012) 209 Cal.App.4th 32, 33–34 (*Mendez*) [appeal dismissed because the trial court lacked jurisdiction to reduce a restitution fine for inability to pay once execution of the sentence began].)

Here, Anderson brought his pro per motion (which he now concedes was meritless) in March 2023. Anderson’s counsel requested a fine reduction due to his alleged inability to pay in July 2024. At those times, the 2013 judgment of conviction and 2022 sentencing order were final and Anderson was already serving his prison term. The trial court therefore lacked jurisdiction to grant the requested relief and the orders are not appealable.

Anderson acknowledges *Turrin* and *Mendez* but urges that this case is different because he sought to challenge an unauthorized sentence. He points out that the trial court did not mention restitution fines at the January 2022 resentencing hearing. Although the minute order stated that “[a]ll previously imposed orders remain in full force and effect,” the court did not make such a statement at the hearing. Anderson therefore argues that the court failed to impose a restitution fine notwithstanding its obligation to fully resentence him pursuant to former section 1170.95, and the resentencing order was accordingly unauthorized. Citing *People v. Picklesimer* (2010) 48 Cal.4th 330, 338, he argues that an unauthorized sentence can be corrected at any time and the court therefore had jurisdiction to rule.

We are not persuaded. Anderson did not challenge the restitution fine in the trial court on the ground that the resentencing order was

unauthorized. His pro per motion asked the court to vacate the restitution fine based on his incorrect reading of a statutory amendment that occurred *after* the resentencing hearing. His counsel's letter mentioned that the restitution fine was not addressed at resentencing but only as support for his request for an ability-to-pay hearing. It did not contend that the resentencing order was legally unauthorized. A challenge to a restitution order on the grounds of inability to pay requires a factual determination and therefore does not fall within an exception for unauthorized sentences. (*Turrin, supra*, 176 Cal.App.4th at pp. 1205–1206; *People v. Torres* (2020) 44 Cal.App.5th 1081, 1085 (*Torres*).) Anderson therefore forfeited any challenge based on an unauthorized resentencing order. (*In re Sheena K.* (2007) 40 Cal.4th 875, 880–881.)<sup>6</sup>

In any event, the trial court's failure to mention the restitution fine at the 2022 resentencing hearing does not establish an unauthorized sentence. The transcript of the hearing shows that the court was reciting only the *changes* to the 2013 sentence to which the parties had stipulated to resolve

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<sup>6</sup> According to the People, the rule that an unauthorized sentence may be challenged at any time does not provide an exception to the general rule that a trial court loses jurisdiction over a defendant's sentence once the defendant begins serving it. There is a split of authority on this point. (See *Turrin, supra*, 176 Cal.App.4th at p. 1205 [listing an unauthorized sentence challenge as an exception to the rule that the trial court loses jurisdiction]; *King, supra*, 77 Cal.App.5th 629, 635–638 [trial court lacks jurisdiction to vacate unauthorized sentence]; *People v. Codinha* (2023) 92 Cal.App.5th 976, 991–993 [trial court has jurisdiction to vacate unauthorized sentence]; *People v. Garcia* (2025) 114 Cal.App.5th 139, 145 [following *King* rather than *Codinha*]; *People v. Singleton* (2025) 113 Cal.App.5th 783, 794 [same]; see also *In re G.C.* (2020) 8 Cal.5th 1119, 1129–1130 [rule that unauthorized sentence may be challenged at any time is an exception to the waiver doctrine, not to the jurisdictional requirements for appellate review].) We need not and do not decide this issue to resolve the appeal.

the former section 1170.95 motion. As the court later confirmed, it was conducting a full resentencing not by announcing each term of a new sentence, but by reciting only the changed terms with the understanding that all other terms would remain the same. The fact that no one mentioned the restitution fines at the resentencing hearing shows that no party believed it necessary or desirable to change them (or even to adjudicate Anderson's ability to pay). That is why the prosecutor told the court at the resentencing hearing that there were no other issues to consider and Anderson's counsel did not object. That is also why the minute order states that all other orders – including the restitution orders – remain the same and why the new abstract of judgment still showed the \$5,000 restitution fine. Indeed, Anderson's motion to strike the restitution fine confirms that he knew his \$5,000 fine was still on the books.<sup>7</sup>

In short, the trial court's oral statements at the 2022 resentencing hearing and the resulting minute order show that Anderson's new sentence included a \$5,000 restitution fine and corresponding parole revocation restitution fine. There was no unauthorized sentence, and Anderson has not shown that the court had jurisdiction to grant the relief he sought.

Nonetheless, Anderson contends that the orders are appealable under section 1237, subdivision (b). That statute authorizes appeals "[f]rom any order made after judgment, affecting the substantial rights of the party." However, when a trial court lacks jurisdiction to grant a postjudgment motion to modify a sentence, its order denying the motion does not affect the defendant's substantial rights. (*Turrin, supra*, 176 Cal.App.4th at p. 1208;

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<sup>7</sup> For the same reasons, we conclude that the references to the \$5,000 restitution and \$5,000 parole revocation restitution fines are not clerical errors.



*Mendez, supra*, 209 Cal.App.4th at p. 34, fn. 1; *King, supra*, 77 Cal.App.5th at p. 639 [“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)”].)

Nor did the trial court have jurisdiction under section 1237.2. Section 1237.2 requires that a defendant seek to correct an erroneous fine in the trial court before taking an appeal. It also provides that the court “retains jurisdiction after a notice of appeal has been filed to correct any error in the imposition or calculation of fines . . . upon the defendant’s request for correction.” But that only means that the pendency of an appeal does not deprive the court of jurisdiction it otherwise has. Section 1237.2 does not create jurisdiction where jurisdiction does not otherwise exist. (*Torres, supra*, 44 Cal.App.5th at pp. 1083–1088 [under section 1237.2, the defendant cannot assert an ability-to-pay challenge in the trial court after the conclusion of the direct appeal from the conviction, because the court no longer has jurisdiction].)

In sum, Anderson has not established that the trial court had jurisdiction to grant the relief he sought by his pro per motion and his counsel’s July 2024 request for a fine reduction due to his inability to pay. The challenged postjudgment orders are therefore not appealable, and we will dismiss the appeals.<sup>8</sup>

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<sup>8</sup> Although we lack jurisdiction over these appeals, we note that Anderson concedes that the appeals are moot as to any amount he had *not* paid as of January 1, 2025, in light of the trial court’s June 2025 order. We further note that Anderson points to no evidence in the record that he paid anything towards the restitution fine. In other words, he does not show that there is any part of the restitution fine not covered by the release in the June 2025 order. Nor does he explain why the restitution order should be reduced

### III. DISPOSITION

The appeals are dismissed.

CHOU, J.

We concur.

SIMONS, ACTING P. J.  
BURNS, J.

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due to his inability to pay as to an amount that he did, in fact, pay. Indeed, it would seem that his payment would confirm his ability to pay.