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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. KAREEM LAMAR BROWN, Defendant and Appellant.	B337405 (Los Angeles County Super. Ct. No. KA030523)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline H. Lewis, Judge. Dismissed.

William L. Heyman, under appointment by the Court of Appeal, and Kareem Lamar Brown, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

As part of a plea agreement, defendant and appellant Kareem Lamar Brown (Brown) pled no contest to second-degree murder. While incarcerated, Brown filed a petition asking the trial court to exercise its discretion to recall his sentence and resentence him under Penal Code section 1172.1 (formerly § 1170, subd. (d)(1) and § 1170.03).[1] The trial court declined Brown's invitation to initiate resentencing under the statute and took no action on his petition.

On appeal, Brown's appointed counsel filed a brief that summarized the procedural history of the case, raised no issues for appellate review, and asked this court to allow Brown to file a supplemental brief under *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*). Brown then submitted a supplemental brief alleging the trial court erred in declining to take any action on his petition for resentencing relief under section 1172.1. After reviewing the contentions raised in Brown's brief, we determine the trial court's ruling on Brown's resentencing petition is not an appealable order and dismiss his appeal.

DISCUSSION

I. *Background*

In an information filed by the Los Angeles County District Attorney, Brown was charged with murder (§ 187, subd. (a)) and attempted murder (§§ 664/187, subd. (a)). The information also alleged a sentence enhancement under section 12022.5 for discharging a firearm at an occupied motor vehicle resulting in great bodily injury or death. In 1997, Brown accepted a plea

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[1] All further statutory references are to the Penal Code unless otherwise specified.

agreement under which he pled no contest to second-degree murder and admitted the sentencing enhancement, in exchange for the dismissal of the charge for attempted murder. The trial court accepted Brown's plea and sentenced him to state prison for a cumulative sentence of 20 years to life.

While incarcerated, Brown filed several post-judgment motions with the trial court seeking various relief. As relevant on appeal, in 2024, Brown filed a petition asking the trial court to recall his sentence and resentence him under section 1172.1. The court reviewed the petition but declined to take any action, stating "The minute order is to reflect that yesterday, a motion was filed under AB600, Penal Code 1172.1. . . . I have reviewed that motion. And the court will be taking no further action. The court does not have to take any action on these. I don't even have to reply. I have reviewed it, and the court is choosing not to exercise its discretion."

Brown then filed the instant appeal. His appointed appellate counsel filed an opening brief asserting claims of error regarding Brown's various post-judgment motions. However, Brown's appellate counsel subsequently filed a request with this court seeking to withdraw the opening brief, stating it was filed erroneously. Brown's counsel asked permission to replace the original brief with a new one raising no issues for appellate review. We granted the request, and counsel filed a brief that summarized the procedural history of the case, raised no issues, and asked this court to follow the procedure outlined in *Delgadillo* to allow Brown to file a supplemental brief raising any issues he wanted.

Brown filed a supplemental brief. Brown's supplemental brief alleges only that the trial court erred in declining to consider or act upon his petition for resentencing relief under section 1172.1. We determine the trial court's

ruling on Brown's section 1172.1 petition is not an appealable order and therefore dismiss Brown's appeal.

II. *Appealability*

Section 1172.1 gives the trial court authority to recall the sentences of incarcerated defendants and resentence them under certain circumstances. As such, 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 a defendant "at any time" upon the recommendation of certain entities or individuals, such as the Secretary of the California Department of Corrections and Rehabilitation or the Board of Parole Hearings. (§ 1172.1, subd. (a)(1).) Once a trial court decides to recall and resentence, "[t]he court may then impose any otherwise lawful resentence suggested by the facts available at the time of resentencing." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 456.)

In 2024, the Legislature amended section 1172.1 to permit a trial court to "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.'" (*People v. Brinson* (2025) 112 Cal.App.5th 1040, 1046 (*Brinson*), quoting § 1172.1, subd. (a)(1).) However, defendants have no right under the statute to move or petition the court for resentencing relief. Instead, section 1172.1, subdivision (c), expressly provides that "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." (§ 1172.1, subd. (c).) This is precisely what happened here.

Section 1237, subdivision (b), governs the appeal of post-judgment orders in felony criminal matters. It authorizes appeals only from post-judgment orders that "affect[] the substantial rights of the [defendant]." (§ 1237, subd. (b).) Accordingly, the appealability of the trial court's order on Brown's resentencing petition turns on whether the order affected his "substantial rights."

"Courts have interpreted the second sentence of section 1172.1, subdivision (c) to mean that defendants do not have a substantial right at stake when they request recall and resentencing." (*Brinson, supra*, 112 Cal.App.5th at p. 1046; accord *People v. Hodge* (2024) 107 Cal.App.5th 985, 999 (*Hodge*) ["a trial court's order declining to exercise its discretion under section 1172.1 to recall a defendant's sentence on its own motion after receiving the defendant's unauthorized request for such relief does not affect the defendant's substantial rights under section 1237, subdivision (b)"].) We conclude that the trial court's order declining to act on Brown's resentencing petition did not affect his substantial rights and is therefore not appealable under section 1237, subdivision (b). Accordingly, we must dismiss his appeal. (See *Brinson, supra*, 112 Cal.App.5th at p. 1049; *Hodge*, *supra*, 107 Cal.App.5th at p. 1000.)

The arguments raised in Brown's supplemental brief do not alter this conclusion.

On appeal, Brown relies on language from section 1172.1, subdivision (a)(1), which states that "Recall and resentencing under this section may be initiated by the original sentencing judge, a judge designated by the presiding judge, or any judge with jurisdiction in the case." (§ 1172.1, subd.

(a)(1).) Brown argues that, because the trial court had jurisdiction over his case, it therefore could initiate resentencing under the statute. Brown contends that the trial court's ability to initiate resentencing "creates a substantial right" that renders the court's order appealable under section 1237, subdivision (b). Brown further claims the language from section 1172.1, subdivision (a)(1) "creates a *reasonable expectation* . . . that when the trial court has jurisdiction in the case, upon an invitation, the court will at the *least*, review the invitation on the merits."

Brown's arguments are belied by the plain language of section 1172.1, subdivision (c), which expressly states both that he was "not entitled to file a petition seeking [resentencing] relief from the court under this section" and that the trial court was "not required to respond" to his petition if he did so. "If the statutory language contains no ambiguity, the Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*People v. Johnson* (2002) 28 Cal.4th 240, 244.) Brown has not established any such ambiguity here. The language in subdivision (a)(1) providing that resentencing "may be initiated by . . . any judge with jurisdiction in the case," does not conflict with the plain language of subdivision (c).

Further, "[u]nder 'well-settled principle[s] of statutory construction,' we 'ordinarily' construe the word 'may' as permissive and the word 'shall' as mandatory, 'particularly' when a single statute uses both terms. [Citation.] In other words, '[w]hen the Legislature has, as here, used both "shall" and "may" in close proximity in a particular context, we may fairly infer the Legislature intended mandatory and discretionary meanings, respectively.' [Citation.]" (*Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538, 542.) Section 1172.1 is replete with uses of the word "shall." (See, e.g.,

§ 1172.1, subds. (a)(2), (a)(4)-(9), (b), (b)(1)-(2), (d).) Accordingly, the use of "may" in subdivision (a)(1) must be understood as permissive or discretionary, not mandatory. With this understanding, subdivision (a)(1) simply states that a trial court may—but is not required to—initiate resentencing. While subdivision (a)(1) provides a court with discretionary authority to initiate resentencing, it does not require the court to do so. Nor does subdivision (a)(1) impose any obligation to review the merits of a defendant's unauthorized petition for resentencing relief.

Brown's arguments on appeal rest on cases that did not involve section 1172.1 or statutory language that is analogous to section 1172.1, subdivision (c). His arguments and authorities are unpersuasive given the plain language of section 1172.1. We agree with the statutory interpretation of section 1172.1 put forth by our colleagues in *Brinson* and *Hodge*. As the trial court had no obligation to consider Brown's unauthorized petition, its decision not to do so did not affect Brown's substantial rights and is therefore not appealable under section 1237, subdivision (b). We therefore must dismiss the appeal. (*People v. Baltazar* (2020) 57 Cal.App.5th 334, 342.)

DISPOSITION

The appeal is dismissed. Brown's motion to vacate his judgment of conviction and withdraw his guilty plea is denied. Brown's request to relieve his appellate counsel is denied as moot.

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ZUKIN, P. J.

WE CONCUR:

COLLINS, J.

MORI, J.