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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.

PATRICK McMILLAN,

Defendant and Appellant.

2d Crim. No. B339825
(Super. Ct. No. 1288180)
(Santa Barbara County)

Patrick McMillan appeals the denial of his request for resentencing under Penal Code section 1172.1¹. We conclude the court's order is not appealable and will dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In 2010 a jury convicted appellant of seven felonies. All charged enhancements and special circumstances were found true, and appellant admitted two prison priors. He was sentenced to 38 years plus 57 years to life. In 2012, his sentence

¹ Undesignated statutory references are to the Penal Code.

was modified to 41 years, 8 months, plus 50 years to life. In 2023 his sentence was modified to 39 years, 8 months, plus 50 years to life, and his prior prison term enhancements were struck.

In March 2024 appellant filed a Request for Recall of Sentence and Resentencing Pursuant to Assembly Bill 600 and Penal Code section 1172.1. The court denied the motion, noting section 1172.1, subdivision (c) prohibits the filing of such a request by the defendant and permits the court not to respond if such a petition is filed.

In July 2024, appellant filed the same motion with minor differences. In its order denying the motion, the court noted its similarity to the previously denied motion and denied the second motion for the same reasons.

DISCUSSION

We appointed counsel to represent appellant on appeal. After an examination of the record, counsel filed an opening brief setting forth the facts of the case, arguing the order is appealable under section 1237, subdivision (b), and asking this court to review the record and determine whether there are any arguable issues on appeal pursuant to *People v. Delgadillo* (2022) 14 Cal.5th 216.

Appellant filed a two-page supplemental brief contending the court erred in declining to resentence him because legislative reforms enacted through Assembly Bill 333, which amended section 186.22, apply retroactively.²

² Because appellant filed a supplemental brief, we are “required to evaluate the specific arguments presented in that brief and . . . issue a written opinion.” (*Delgadillo, supra*, 14 Cal.5th at p. 232.)

We cannot consider the merits of appellant’s arguments. Section 1172.1, subdivision (c) 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.” A defendant who nevertheless files a request under section 1172.1 “has no *right* to a ruling.” (*People v. Hodge* (2024) 107 Cal.App.5th 985, 996; § 1237, subd. (b).) As such, the order denying appellant’s petition is not appealable because it does not affect his substantial rights. (See *Hodge*, at p. 991 [declining to exercise discretion to recall sentence did not affect defendant’s substantial rights “because the trial court had no statutory obligation to act at all” on defendant’s request].)

DISPOSITION

The appeal is dismissed.

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CODY, J.

We concur:

YEGAN, Acting P. J.

BALTODANO, J.

Stephen Foley, Judge
Superior Court County of Santa Barbara

Michele A. Douglass, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.