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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. STEVEN MAGANA, Defendant and Appellant.	F089068 (Super. Ct. No. CRM000729A) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Merced County. Jennifer O. Trimble, Judge.

Jan B. Norman, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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[*] Before Detjen, Acting P. J., Peña, J. and Harrell, J.

INTRODUCTION

In January 2024, defendant Steven Magana submitted a request for the trial court to recall and resentence him pursuant to Penal Code section 1172.1 as amended by Assembly Bill No. 600 (2023–2024 Reg. Sess.) (Assembly Bill 600). (Undesignated statutory references are to the Penal Code.) The court denied defendant's request in a written order in March 2024, and our court dismissed the appeal from that order in an unpublished opinion. (See *People v. Magana* (Aug. 14, 2025, F087792) [nonpub. opn.] (*Magana*).) Thereafter, defendant submitted another, nearly identical, request for the trial court to recall and resentence him pursuant to section 1172.1 as amended by Assembly Bill 600 on October 10, 2024. The court issued a written order denying that request on November 5, 2024. Defendant now appeals from that order denying relief.

His counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) and *People v. Delgadillo* (2022) 14 Cal.5th 216 (*Delgadillo*). Our court sent defendant a letter notifying him counsel found no arguable issues, he had 30 days to file a supplemental letter or brief raising any arguable issues, and his failure to file a supplemental letter or brief could result in this court dismissing the appeal as abandoned. Defendant did not file a supplemental letter or brief.

We dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In 2009, a jury convicted defendant of premeditated attempted murder (§§ 664, 187; count 1), discharging a firearm at an inhabited camper (§ 246; count 2), active participation in a criminal street gang (§ 186.22, subd. (a); count 3), and two counts of unlawful possession of a firearm (former § 12021, subd. (e); counts 4 & 5).[1] The jury found true gang enhancement allegations (§ 186.22, subd. (b)) as to counts 1, 2, 4, and 5.

[1] On September 16, 2025, our court granted defendant's unopposed "Request for Judicial Notice," asking our court to take judicial notice of the record in defendant's prior appeal before this court, *Magana*, *supra*, F087792.

As to count 1, the jury also found true allegations defendant personally discharged a firearm causing great bodily injury during the commission of the crime (§ 12022.53, subd. (d)) and personally inflicted great bodily injury (§ 12022.7, subd. (a)) during the commission of the offense. As to count 2, the jury found true an allegation defendant personally discharged a firearm causing great bodily injury during the commission of the crime (§ 12022.53, subd. (d)).

On November 20, 2009, the trial court sentenced defendant to 15 years to life on count 1, plus 25 years to life for the section 12022.53 firearm enhancement as to count 1, eight months (one-third the middle term) for count 3, eight months (one-third the middle term) for count 4, plus an additional year for the related gang enhancement (§ 186.22, subd. (b)(1)), and eight months (one-third the middle term) for count 5, plus an additional year for the related gang enhancement (§ 186.22, subd. (b)(1)). The court imposed sentences on the remaining counts and enhancements but ordered them stayed pursuant to section 654. In 2016, the court amended the sentence such that defendant was sentenced to two years on count 4 (the middle term) plus three years on the gang enhancement as to count 4 (the middle term), to run concurrent to defendant's sentence on count 1. The amended abstract of judgment also reflects the sentence on count 3 was ordered stayed pursuant to section 654.

On January 5, 2024, defendant submitted a "Request for Recall of Sentence and Resentencing Pursuant to Assembly Bill 600 and … Section 1172.1," asserting he was eligible for consideration of a new sentence under Assembly Bill 600 and section 1172.1 because sections 186.22 and 1109 applied at the time of his sentencing and had since changed (as amended in 2022 by Assembly Bill No. 333 (2021–2022 Reg. Sess.) (Assembly Bill 333)). He attached to his request a "Social Biography" regarding his progress while incarcerated. This included an introduction letter that detailed "traumatic experiences" defendant endured during his childhood. He noted he had participated in several groups and had successfully completed "Relapse Prevention and Pathways to

Sobriety" programs as well as earned college credits for classes taken while incarcerated. In a letter to the victim's family, defendant stated "even though I did not commit this crime, my actions one way or another had an effect on the outcome of the crime." He also included a "Gang Expert Letter" dated May 23, 2023. He provided evidence of his program completions, jobs, responses to his rules violation reports, support letters from family, friends, and programs, a reentry plan, and a relapse prevention plan.

The trial court issued a written "Ruling on Motion for Resentencing Pursuant to … [Sections] 186.22 and 1109" on March 11, 2024. (Capitalization omitted.) The order noted "[t]he California Supreme Court has held that Assembly Bill 333 applies retroactively only when a case is not final." The court held: "[Defendant]'s case is final, and he is, therefore, not entitled to relief pursuant to [section] 186.22. [¶] The underlying convictions do not qualify for relief pursuant to … [section] 1109. Accordingly, the petition is DENIED." (Bold omitted.) Defendant previously appealed and, in an unpublished decision, our court dismissed the appeal, concluding it arose from a nonappealable order. (See *Magana*, *supra*, F087792.)

Thereafter, the trial court received another, nearly identical, form "Request for Recall of Sentence and Resentencing Pursuant to Assembly Bill 600 and … Section 1172.1" from defendant on October 10, 2024, which attached a "Social Biography" and documents in support, most of which were attached to his January 5, 2024 "Request for Recall of Sentence and Resentencing Pursuant to Assembly Bill 600 and … Section 1172.1." The court denied defendant's October 10, 2024, form "Request for Recall of Sentence and Resentencing Pursuant to Assembly Bill 600 and … Section 1172.1" in a written order dated November 5, 2024. The order states, "Under … section 1172.1, any recall and resentencing may only be initiated by the court or specified authorities. Petitioner is not a party who is authorized to make this request. The court declines petitioner's invitation to recall and resentence." Defendant now appeals from that order.

DISCUSSION

In *Wende*, *supra*, 25 Cal.3d 436, our Supreme Court held the Courts of Appeal must conduct a review of the entire record whenever appointed counsel submits a brief on direct appeal that "raises no specific issues or describes the appeal as frivolous." (*Id*. at p. 441; see *Anders v. California* (1967) 386 U.S. 738, 744.) "This procedure is applicable to the first appeal as of right and is compelled by the constitutional right to counsel under the Fourteenth Amendment of the United States Constitution." (*Delgadillo*, *supra*, 14 Cal.5th at p. 221, citing *Wende*, at pp. 439, 441; accord, *Anders*, at pp. 741, 744.)

In *Delgadillo*, the court held that the procedure provided for in *Wende/Anders* is not applicable to an appeal from a trial court's order denying a petition for postconviction relief under section 1172.6. (*Delgadillo*, *supra*, 14 Cal.5th at p. 222.) The *Delgadillo* court explained the *Wende/Anders* procedure did not apply because the denial of the defendant's section 1172.6 petition did not implicate the defendant's constitutional right to counsel (even if the defendant had a state-created right to the appointment of counsel for that appeal). (*Delgadillo*, at pp. 224, 226.) The *Delgadillo* court also rejected the argument that *Wende*-type procedures should apply as a matter of general due process principles requiring fundamental fairness. (*Delgadillo*, at pp. 228–229.) Nevertheless, the *Delgadillo* court held that "if the appellate court wishes, it may also exercise its discretion to conduct its own independent review of the record in the interest of justice." (*Id*. at p. 230.)

In this case, appellate counsel filed a brief pursuant to *Wende* and *Delgadillo* from the denial of defendant's motion/petition. In counsel's declaration attached to the brief, counsel averred that counsel advised defendant that defendant could file his own brief with this court within 30 days and that this court may treat the appeal as abandoned and dismiss it if defendant did not timely file a supplemental brief or letter within 30 days. This court also sent defendant a notice stating that he could submit a letter within 30 days

submitting any additional grounds on appeal he would like our court to consider. The order specified that if this court did not receive a supplemental letter or brief from defendant within 30 days from the date of the order, the appeal may be dismissed as abandoned. Defendant did not file a supplemental brief.

As we held in defendant's previous appeal, we conclude the appeal must be dismissed because it arises from a nonappealable order. Where, as here, execution of sentence has commenced and the judgment is final, the trial court is generally "deprived of jurisdiction to resentence" a criminal defendant. (*People v. Karaman* (1992) 4 Cal.4th 335, 344, citing *Dix v. Superior Court* (1991) 53 Cal.3d 442, 455; accord, *People v. Hernandez* (2019) 34 Cal.App.5th 323, 326.) To obtain resentencing on a final judgment, a defendant generally must file a petition for writ of habeas corpus (see *People v. Picklesimer* (2010) 48 Cal.4th 330, 339) or proceed by way of a special statutory procedure (e.g., §§ 1170.18, 1170.91, 1172.1, 1172.2, 1172.6, 1172.7, 1172.75). (*People v. Hernandez* (2024) 103 Cal.App.5th 1111, 1118.)

Section 1172.1 (former § 1170, subd. (d)) provides an exception to the general rule that a trial court loses jurisdiction once execution of sentence has begun by authorizing a recall and resentencing procedure that may be invoked when, for example, the Secretary of the Department of Corrections and Rehabilitation (CDCR) recommends resentencing. (§ 1172.1, subd. (a)(1); *People v. E.M.* (2022) 85 Cal.App.5th 1075, 1082.) Assembly Bill 600 amended section 1172.1 to allow a court to now resentence a defendant "on its own motion" when "applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law." (§ 1172.1, subd. (a)(1), as amended by Stats. 2023, ch. 446, § 2.) Accordingly, effective January 1, 2024, section 1172.1, subdivision (a)(1) provides the court may, "*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*, … recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not

previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence." (Italics added.) Notably, section 1172.1, subdivision (c) expressly states, "A defendant is not entitled to file a petition seeking relief from the court under this section." (*Ibid.*) Additionally: "If a defendant requests consideration for relief under this section, the court is not required to respond." (*Ibid.*)

Furthermore, " ' "[i]t is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute." ' " (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 598.) Section 1172.1 does not address whether a trial court's denial of a defendant's request for recall and resentencing under the statute is appealable. However, section 1237, subdivision (b) "provides that a defendant may appeal from 'any order made after judgment, affecting the substantial rights of the party.' " (*Teal*, at p. 598.)

And here, we cannot conclude the trial court's order denying defendant's request for recall and resentencing pursuant to section 1172.1 and Assembly Bill 600 affects defendant's substantial rights such that it is an appealable order. Rather, by stating a court may decline to respond to a defendant's request for relief under the statute, the language of section 1172.1, subdivision (c) establishes there is no affirmative obligation on a trial court to consider a defendant's request for relief or initiate recall and resentencing proceedings in response thereto. And, if a court has no duty to respond to—let alone grant—a defendant's request for relief, it follows that a defendant has no *right* to the initiation of recall and resentencing proceedings. Thus, where, as here, the court issues an order denying such relief, it cannot be said to affect the defendant's substantial rights as would be required for such a postjudgment order to be appealable. (§ 1237, subd. (b).)

Accordingly, the appeal must be dismissed.

DISPOSITION

The appeal is dismissed.