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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

GILBERT STEVEN MERCADO,

Defendant and Appellant.

E085645

(Super.Ct.No. FVI04821)

OPINION

APPEAL from the Superior Court of San Bernardino County. Enrique Guerrero, Judge. Dismissed.

Debbie Yen, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Gilbert Steven Mercado appeals from the order of the San Bernardino County Superior Court denying his Penal Code section 1172.1 petition for resentencing.<sup>1</sup> We will dismiss the appeal.

## **BACKGROUND**

Defendant was convicted by a jury of several offenses including four counts of aggravated sexual assault (§ 269, subd. (b)) and one count of continuous sexual abuse of a child under the age of 14 (§ 288.5). The trial court sentenced him to a term of 37 years in state prison followed by an indeterminate prison term of 120 years to life.

In July 2024, defendant filed a request for recall of sentence and resentencing pursuant to section 1172.1 and the trial court appointed counsel to represent him. In February 2025, after conferring with counsel for defendant and the People, the trial court stated it had reviewed defendant's petition and was not going to respond to it, citing section 1172.1, subdivision (c).

Defendant noticed this appeal and we appointed counsel to represent him.

Defendant's counsel has filed a no-issues brief in accordance with *People v. Delgadillo* (2022) 14 Cal.5th 216, 231–232. Defendant did not respond to our invitation to file a supplemental brief.

## **DISCUSSION**

Section 1172.1 sets forth the procedures for resentencing a defendant who has been convicted of a felony offense and committed to the custody of the Secretary of the

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

Department of Corrections and Rehabilitation or to the custody of the county correction administrator pursuant to subdivision (h) of section 1170. (§ 1172.1, subd. (a)(1).)

In relevant part, section 1172.1 authorizes the trial court to recall and resentence defendant on its own motion at any time if the applicable sentencing laws in force when the defendant was originally sentenced have subsequently been changed by new statutory authority. (§ 1172.1, subd. (a).) Section 1172.1 also makes clear that defendants are not entitled to request consideration for relief under the statute and, if they do, the trial court is not required to respond. (§ 1172.1, subd. (c).)

Here, the trial court chose not to respond to defendant's request for section 1172.1 resentencing relief.

The right to appeal is determined by statute, and a party may not appeal a trial court's judgment, order, or ruling that is not expressly made appealable by statute. (*People v. Loper* (2015) 60 Cal.4th 1155, 1159.) Section 1237 limits a defendant's right to appeal postjudgment orders to those orders affecting the substantial rights of the party. (§ 1237, subd. (b).)

In a case like the present one in which the trial court does not have a statutory obligation to act on a defendant's motion, then that person is not deprived of any substantial rights if the court declines to respond. (*People v. Faustinos* (2025) 109 Cal.App.5th 687, 696; *People v. Hodge* (2024) 107 Cal.App.5th 985, 996.) Accordingly, the court's decision not to grant defendant's request to recall and resentence him is not an appealable order. (*Faustinos, supra*, at p. 696; *Hodge, supra*, at p. 996.)

## **DISPOSITION**

The appeal is dismissed.

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RAMIREZ

P. J.

We concur:

McKINSTERY

J.

FIELDS

J.