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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.

JAMES EDWARD BRYANT,

Defendant and Appellant.

E080040

(Super.Ct.No. RIF1903965)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Dismissed.

James E. Bryant, in pro. per.; Heather E. Shallenberger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant James Edward Bryant appeals from the trial court’s order denying his motion for recall and resentencing under Penal Code¹ former section 1171.1, subdivision (a).² For the reasons set forth *post*, we dismiss the appeal.

STATEMENT OF THE CASE

On October 24, 2019, an amended felony complaint charged defendant with robbery under section 211 (counts 1, 2), and making criminal threats under section 422 (count 3). The complaint also alleged that defendant suffered from two strike priors under sections 667, subdivision (c) and (e)(1), and 1170.12, subdivision (c)(1). Moreover, the complaint alleged that defendant was convicted of one prior serious felony under section 667, subdivision (a).

On January 9, 2020, pursuant to a plea agreement, defendant pled guilty to counts 1, 2, and 3, and admitted one strike. The trial court then sentenced defendant to 10 years and four months, as follows: (1) count 1—the low term of two years, doubled, plus five years for the prior strike; (2) count 2—the low term of two years, doubled, plus five years for the prior strike, stayed under section 654; and (3) count 3—one-third the midterm for eight months, doubled, to run consecutively to count 1.

On July 20, 2021, after defendant appealed, this court remanded the case to the trial court. At the hearing upon remand, the trial court stated: “Mr. Bryant, your matter

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

² The Legislature renumbered section 1171.1—it is now section 1172.75. (Stats. 2022, ch. 58, § 12, effective June 30, 2022.) We will refer to the new numbering and current version in this opinion.

came back on a remittitur, meaning it was up on appeal, and the Court of Appeal sent the matter back for two reasons.” After some discussion, defendant reentered the negotiated plea agreement. Thereafter, the trial court struck one of the prior strikes, and sentenced defendant to the stipulated term of 10 years and four months. The court stated that the prior judge who conducted the initial plea hearing “indicated that they did not have discretion to consider to strike your five-year prior or to resentence you in some other way, when the Court of Appeal says they actually did have discretion.” At the second plea hearing, the court acknowledged that it (1) had the discretion to strike the prior, and (2) was willing to let defendant withdraw his plea. However, the trial court told the parties that it would not strike the five-year enhancement under section 667, subdivision (a). After thoroughly analyzing the background of this case, the court stated, “[a]s to the five-year prior, the Court is going to enforce the five-year prior and sentence you to an additional five years consecutive to Counts 1, 2, and 3 for a total sentence of ten years, four months.” After further discussion between the court, the prosecutor and defense counsel, the court stated: “So I’ll indicate that that’s my finding—that this is the appropriate and fair sentence for [defendant] based on everything I know about [defendant], having read the *Romero* motion, which went into my background in depth and everything else submitted to the Court.”

On September 29, 2022, defendant filed a motion in pro. per. for recall and resentencing. Defendant argued that the court was precluded from imposing an enhancement under section 667.5, subdivision (b). The court denied defendant’s motion.

Defendant filed a notice of appeal from the denial of his motion for recall and resentencing.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and has requested this court to undertake a review of the entire record. Pursuant to *Anders*, counsel identified the following issue to assist the court in its search of the record for error:

“Whether the order denying appellant’s motion for recall and resentencing in an appealable order? (Compare [*People v.*] *Pritchett*[(1993)] 20 Cal.App.4th 190 with Pen. Code, § 1237, subd. (b).)”

We agree with defense counsel that we must first determine whether we have jurisdiction to hear this appeal. We conclude that we do not.

The right to appeal is statutory, and an order following judgment is appealable only if it affects a defendant’s substantial rights. (§ 1237, subd. (b); *People v. Clark* (2021) 67 Cal.App.5th 248, 254.)

“The general rule is 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.’ [Citations.] And, [i]f the trial court does not have jurisdiction to rule on a motion to vacate or modify a sentence, an order denying such a motion is nonappealable, and any appeal from such an order must be dismissed.’ ” (*People v. King* (2022) 77

Cal.App.5th 629, 634.) This jurisdictional rule, however, is subject to exceptions. For instance, a trial court retains jurisdiction to resentence a defendant under “specific statutory avenues for incarcerated defendants to seek resentencing in particular cases,” or under a “properly filed” habeas petition. (*Id.* at 637.) Section 1172.75 is one of these statutory exceptions.

On January 1, 2022, Senate Bill 483 added section 1172.75 (formerly section 1171.1) to the Penal Code. (Stats. 2021, ch. 728, § 3.) Section 1172.75, subdivision (a), provides: “Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense . . . is legally invalid.”

Notwithstanding the statutory exception carved out by section 1172.75, defendant’s appeal must be dismissed because that section does not apply to defendant.

First, the trial court imposed the enhanced sentence *after* January 1, 2020; it imposed the sentence on July 21, 2021, when the case was remanded back to the trial court from this court. Moreover, the court imposed the five-year enhancement under section 667, subdivision (a), not section 667.5. Therefore, the statutory exception under section 1172.75 does not apply to defendant’s case.

In sum, because the trial court lacked jurisdiction to grant the relief requested in defendant’s motion, the order denying the motion does not affect defendant’s substantial rights, as contemplated under section 1237, subdivision (b). Thus, the order denying defendant’s motion to recall and resentence is not appealable, and the appeal must be dismissed. (See *People v. Fuimaono* (2019) 32 Cal.App.5th 132, 135.)

Even if we were to consider defendant’s claim on the merits, his claim fails. After defense counsel filed a brief under *People v. Wende*, we offered defendant an opportunity to file a personal supplemental brief. On March 20, 2023, defendant filed a three-page typewritten brief.

In his brief, defendant appears to be arguing that his sentence should have been reduced pursuant to “new laws and reforms [that] modify the terms of an existing plea agreement.” However, as discussed above, section 1172.75 does not apply to defendant’s case. Therefore, defendant’s argument is without merit.

For the reasons set forth *ante*, we dismiss defendant’s appeal.

DISPOSITION

The appeal is dismissed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

MENETREZ
J.