

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD PAUL DAVENPORT,

Defendant and Appellant.

B332378

(Los Angeles County
Super. Ct. No. SA017777)

APPEAL from an order of the Superior Court of Los Angeles County, Lauren Weis Birnstein, Judge. Dismissed.

Susan Morrow Maxwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Susan Sullivan Pithey, Assistant Attorney General, William H. Shin and Christopher G. Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ronald Paul Davenport (defendant) appeals the denial of a petition for resentencing pursuant to Penal Code section 1172.75, asserting the trial court erred in finding he was ineligible for resentencing.¹ After briefing had been completed we asked counsel to address whether the trial court had jurisdiction to hold a resentencing hearing under section 1172.6, subdivisions (b) and (c). Finding the court lacked jurisdiction, we dismiss the appeal.

BACKGROUND

Defendant's 1996 conviction

In 1996, a jury convicted defendant of possession of a controlled substance. (Health & Saf. Code, § 11350, subd. (a).) The court found true two prior strike allegations (§ 667, subd. (b)-(i)) and three prior prison enhancement allegations (§ 667.5, subd. (b)). The three prior prison term enhancements were stayed, and defendant was sentenced to 25 years to life in prison. This judgment was affirmed on appeal in *People v. Davenport* (Oct. 28, 1997, B103775) (nonpub. opn.).

Section 1172.75 Petition and motion

Section 1172.75 provides with some exceptions that sentence enhancements imposed prior to 2020, pursuant to section 667.5, subdivision (b) are legally invalid. The section also provides resentencing relief under specific circumstances and charges the Secretary of the Department of Corrections and Rehabilitation (CDCR) with identifying those who might qualify for resentencing. (See § 1172.75, subds. (a)-(c).) On October 25,

¹ All further unattributed code sections are to the Penal Code unless otherwise stated.

2022, defendant filed an in pro. per. petition for resentencing pursuant to former section 1171.1, now section 1172.75.² Upon receipt of the petition, the trial court appointed counsel for defendant and scheduled a hearing for December 28, 2022, which was continued to March 27, 2023. On March 27 defense counsel filed a “motion regarding threshold eligibility under SB 483^[3] and Penal Code § 1172.75” with a memorandum of points and authorities. The court continued the hearing to May 24, 2023, to allow the prosecutor time to file a response.⁴ At the hearing, the court found defendant had not made a prima facie showing of eligibility for resentencing under Senate Bill No. 483 (2021–2022 Reg. Sess.) and section 1172.75 because his prior prison term enhancements had been stayed, not executed.

Defendant filed a timely notice of appeal from the May 24, 2023 ruling.

DISCUSSION

In their initial briefs on appeal, the parties agreed section 1172.75 governs the issues on appeal. Section 1172.75 requires proceedings to be initiated by the CDCR rather than by a defendant’s petition. (*People v. Escobedo* (2023) 95 Cal.App.5th 440, 447–448 (*Escobedo*).) In our initial review of the briefs and appellate record we found no such letter or referral from the CDCR or any mention in defendant’s briefs of any such

² The title of defendant’s petition states it was filed pursuant to section 1171.1, which has since been renumbered section 1172.75. (See Stats. 2022, ch. 58, § 12.)

³ See Senate Bill No. 483 (2021–2022 Reg. Sess.).

⁴ No such response appears in the record before us.

communication. We informed the parties of the omission and invited them to file supplemental briefs addressing whether the trial court had jurisdiction to hold a resentencing hearing under section 1172.6, subdivisions (b) and (c).

In addition to filing supplemental letter briefs, both defendant and the People filed a motion to augment the record with attached exhibits. Defendant also filed a request for judicial notice with attached exhibits. We have granted the motions and have taken judicial notice as requested.

The resentencing procedure set forth in subdivision (c) of section 1172.75 is as follows: “*Upon receiving the information* described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentencing enhancement described in subdivision (a). *If the court determines* that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant.” (Italics added.) “[A]ny review and verification by the court in advance of resentencing is only triggered by receipt of the necessary information from the CDCR Secretary or a county correctional administrator, not by any individual defendant. [Citation.] [S]ection 1172.75 simply does not contemplate resentencing relief initiated by any individual defendant’s petition or motion.” (*People v. Burgess* (2022) 86 Cal.App.5th 375, 384 (*Burgess*)).

In his letter brief defendant acknowledges there is no CDCR letter regarding defendant in the superior court file but contends it is not the policy of the CDCR to send *letters*, but it instead provides the superior court with a *list* of names. He also suggests he was named on such a list. To support that assertion, defendant cites a page of the CDCR Web site that provides two

phases for the identification of those potentially eligible for resentencing due to the invalidity of section 667.5, subdivision (b), and indicated that a *list* of all such persons had been “provided to each California superior court via their Executive Court Officer using CDCR’s Secure File Transfer Portal. The lists were also provided to the Judicial Council, the California Public Defenders Association (CPDA) and the California District Attorneys Association (CDAA).”⁵ In further support of the argument the CDCR identifies potentially eligible persons only with a list and not with a letter, defendant cites *People v. Cota* (2023) 97 Cal.App.5th 318, 332 (*Cota*). *Cota*, however, does not support defendant’s argument. There, the court held “section 1172.75 does not authorize a defendant to seek resentencing on his or her own motion or petition” and found the defendant’s motion for resentencing unauthorized. (*Ibid.*) The court found jurisdiction because, while the motion was pending, the CDCR provided the court with a list that identified defendant as potentially eligible for resentencing. (*Id.* at p. 326.) The court held that “[o]nce the trial court received that identification information from the Department of Corrections and Rehabilitation, it had authority over the matter and was statutorily authorized to act.” (*Id.* at pp. 332–333.) *Cota* is distinguishable on its facts as the record in this case contains no list that identifies defendant, let alone any mention of receiving a list.

⁵ See CDCR, Family & Friends Services, *Senate Bill 483* (2025) <<https://www.cdcr.ca.gov/family-resources/2022/06/03/senate-bill-483/>> (as of Feb. 19, 2025), archived at <<https://perma.cc/YFV6-SP44>>.

To show such list existed and contained defendant's name, defendant refers to the copy of an undated form letter attached to his motion to augment as exhibit A.⁶ Defendant attached as exhibit B a copy of a list of minute orders entered between July 23, 2018, and November 1, 2022, regarding various petitions defendant had filed. The minute order of October 25, 2022, the date defendant filed his in pro. per. petition, states in relevant part: "Case file received and forwarded to the courtroom for resentencing review pursuant to 1171(A)/1171.1(A) PC." The final minute order on the exhibit is incomplete, but it is reproduced in the clerk's transcript. It is dated November 1, 2022, acknowledges receipt of the file and orders the appointment of counsel "for resentencing proceedings pursuant to Penal Code section 1172.75." Defendant asserts there is no indication in the undated form letter or the minute orders that the court was acting in response to defendant's petition. He thus concludes the documents show the court acted in response to a CDCR list, not the petition.

⁶ The form is signed by Judge Kathryn Solorzano with a handwritten addressee and case No. SA017777. The reference line of the form states: "Invalid Priors 1172.7 and 1172.75," and the body of the form is as follows:

"The file or files have been distributed to you by Judge Solorzano (by matrix). [¶] To expedite matters, I have not asked for the preparation of a minute order. [¶] Please calendar the matter asap; appoint the PD, APD, or IPD to the matter asap; and order counsel to contact the defendant asap in order to obtain a waiver of appearance or to inform the court re defendant's request to be present for sentencing. [¶] Please set the matter for a hearing ASAP."

However, the minute order of October 25, 2022, was entered on the day defendant filed his section 1172.75 petition in pro. per. A few days later, defendant's file was received by Judge Birnstein, who appointed counsel, scheduled a hearing, continued it, received appointed counsel's motion, and continued the hearing again to May 24, 2023. On May 24, the court indicated the hearing concerned *defense counsel's* motion for resentencing under section 1172.75. No mention was made of a CDCR list.

Following defendant's letter brief the People provided two certificates from the superior court clerk, attached to the People's motion to augment as exhibits 1 and 2. On October 22, 2024, the clerk certified that after a search of the court file, the courtroom, and the clerk's office, no letters from the CDCR were found pertaining to defendant's case file. On November 1, 2024, the clerk certified that in addition to searching the court file, the courtroom, and the clerk's office, the clerk inquired of the district attorney and defense counsel, and no lists of names from the CDCR were found pertaining to defendant's case file. The People take the position there is nothing in the record that affirmatively shows CDCR commenced or was involved with defendant's section 1172.75 proceedings.

In reply, defendant attached another copy of Judge Solorzano's form letter regarding defendant's case, and a case information printout for *People v. Banuelos*, case No. SA017369, which like defendant's case contains the notation the "case file [was] received and forwarded to the courtroom for resentencing review pursuant to 1171(A)/1171.1(A) PC." Defendant alleges his counsel viewed that case file and found no CDCR list or petition for resentencing, but instead a form letter just like the one in defendant's file. Defendant points out the Banuelos section

1172.75 matter was considered by the trial court at the same time as defendant's matter because defense counsel had filed the same "motion" in both cases. While unclear, defendant appears to argue this shows that his appellate counsel was incorrect in the opening brief stating this appeal was taken from the denial of a "petition" because defendant's in pro. per. petition was not even file-stamped, not docketed, and the trial court never mentioned it.⁷ Defendant offers no explanation as to the difference between a petition and a motion in this context. Regardless, an individual defendant may not initiate a resentencing hearing by either a petition or a motion. (*Burgess, supra*, 86 Cal.App.5th at p. 384; see *People v. Gray* (2024) 101 Cal.App.5th 148, 164–165, citing and quoting *Cota, supra*, 97 Cal.App.5th at pp. 329–331.)

Defendant's reply brief includes a statement that appellate counsel reviewed the actual court file and spoke to Judge Solorzano's clerk about the matter. The clerk, who had some recollection, made phone calls and spoke to the court administrator, who was unable to locate a copy. None of the inquiries provides proof that defendant's information was *on* any list received by the superior court.

Defendant further asserts we should *presume* the trial court's jurisdiction was triggered by a CDCR list that included defendant's name. Quoting *People v. Bankers Ins. Co.* (2020) 57 Cal.App.5th 418, 425, defendant argues we should apply the "basic presumption indulged in by reviewing courts that the trial court . . . kn[ew] and applied the correct statutory and case law in the exercise of its official duties." The quote in that case was in

⁷ The in pro. per. petition was file-stamped on the page of the clerk's transcript just before the page defendant cited.

turn taken from *People v. Mack* (1986) 178 Cal.App.3d 1026, 1032, which applied the presumption due to the absence of evidence to the contrary. (*Bankers Ins. Co.*, at p. 425.)

Here, the record contains sufficient evidence the trial court lacked jurisdiction to rule on defendant's petition and counsel's motion. The judgment against defendant had been final for many years when the petition and motion were filed. "In general, "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." (Cota, *supra*, 97 Cal.App.5th at p. 329.) A motion or petition is not an independent remedy, *but must be attached to some ongoing action*. (*Escobedo, supra*, 95 Cal.App.5th at p. 448.) Here, there was no other action shown. Thus the trial court lacked jurisdiction to adjudicate either counsel's motion or defendant's petition. (*Id.* at p. 449; see *Burgess, supra*, 86 Cal.App.5th at p. 382.)

As no jurisdiction to adjudicate defendant's petition or motion was established, this court also lacks jurisdiction over the appeal, and it must be dismissed. (See *People v. Gray, supra*, 101 Cal.App.5th at p. 165; *Escobedo, supra*, 95 Cal.App.5th at p. 444; *Burgess, supra*, 86 Cal.App.5th at p. 381.)

DISPOSITION

The appeal is dismissed.

CHAVEZ, J.

We concur:

LUI, P. J.

RICHARDSON, J.