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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN SEBRING,

Defendant and Appellant.

A141346

(San Francisco County
Super. Ct. No. 1537532)

This is defendant’s third appeal relating to a judgment entered 20 years ago. For the procedural history of this case we will quote from our 2013 decision in the second appeal.

“On October 5, 1994, a criminal complaint was filed charging defendant with extortion (§ 524); criminal threats (§ 422); and stalking (§ 646.9, subd. (a)). On December 9, 1994, defendant pled guilty to a misdemeanor violation of section 422. The plea was entered with the understanding that defendant would be placed on probation for three years and that the remaining charges of the complaint would be dismissed. . . . The court imposed the agreed-upon sentence and placed defendant on probation for three years with credit for 70 days already served. Upon the prosecutor’s motion, the court dismissed the remaining counts. Defendant was represented by counsel.

“On February 5, 1996, defendant moved to withdraw his guilty plea. The court denied the motion as untimely. On July 20, 1998, the court’s ruling was affirmed on appeal.

“About five years after entering his plea, on February 25, 2000, defendant moved pursuant to section 1203.4 to withdraw his plea of guilty and to dismiss the action. He declared that he had successfully completed the terms of probation, was not serving a sentence for any offense, and was not on probation or charged with any offense. On March 24, 2000, the court granted the motion and ordered the complaint and amended complaint in Case No. MCR-1537532 dismissed. . . .

“On April 18, 2012, defendant filed another motion to withdraw his guilty plea pursuant to the plea bargain, to vacate the judgment, and for specific performance of the plea bargain. Defendant maintained that in exchange for his plea of guilty, the prosecutor promised him that after he completed probation, he could withdraw his plea of guilty ‘without limitation or exception and for all purposes, and that then I would stand in the position I was prior to the entry of the guilty plea, and that I would stand trial on the original charges if I withdrew my guilty plea.’ He states his understanding ‘evolved to be’ that he would stand trial on only count II of the amended complaint. [¶] . . . [¶]

“The court denied defendant’s motion to withdraw his plea. . . .” (*People v. Sebring* (Nov. 18, 2013, A136123 [nonpub. opn.] pp. 1–3.)

We affirmed the court’s order, stating, “[h]ere, defendant received the benefit of his plea bargain — the ability to seek relief under section 1203.4 upon the completion of probation. The complaint against him was dismissed. He cannot now, after 18 years, obtain a reinstatement of the charges against him.” (*People v. Sebring, supra*, A136123, p. 5.) We further noted that “defendant had several means to withdraw his plea— section 1018, appeal of his conviction . . . or filing a petition for writ of habeas corpus. [Citation.] He did not avail himself of those remedies, and over 18 years have passed since the judgment of conviction was entered. A trial court does not retain ‘jurisdiction for all time to consider belated constitutional challenges to a long-since final judgment.’ [Citation.] Since defendant failed to avail himself of the remedies provided by law, he cannot years later obtain relief via a nonstatutory motion challenging his plea on due process grounds. ([Citation], see, also *People v. Picklesimer* (2010) 48 Cal.4th 330, 337 [‘ “no statutory authority for a trial court to entertain a postjudgment motion that is

unrelated to any proceeding then pending before the court.” ’)’ (*People v. Sebring*, *supra*, A136123, p. 6.)

In January 2014, defendant filed a motion to correct clerical errors in the docket entry for the 1994 proceeding. He stated that he had been charged in Count II of the complaint with a violation of Penal Code section 422 as a felony, that the prosecutor requested the charge be reduced to a misdemeanor, that defendant’s counsel “waive[d] instruction and arraignment on the amended complaint, defects in the oral amendment, and stipulate[d] it is the same thing but a misdemeanor,” that he pled guilty to section 422 of the Penal Code as a misdemeanor, and that the court found defendant “ ‘guilty of a violation of section 422 of the Penal Code as a misdemeanor.’ ” He contended, however, that he was “never found . . . guilty of Count II of the Complaint or of any amended complaint or of any actual charge in the within case . . . [¶] [yet] the records of the within case . . . erroneously state and reflect that defendant Sean Sebring pleaded guilty to ‘CT II – [Action Number] L289653.’ ” He sought an order finding that “the inclusion of the symbols, numerals and letters ‘CT II – L289653’ written on the 12/9/1994 Record Re the Entry of Plea of Guilty . . . is an erroneous clerical error,” an order striking the error from the record, and an order that the records in the case be “corrected *nunc pro tunc* to reflect that defendant did not plead guilty to Count II . . . or Action Number L289653.” The court denied the motion, and defendant appealed. We asked for briefing on the question of whether the trial court’s order denying the motion is appealable.

Defendant argues it is appealable as an order made after judgment “affecting the substantial rights of the party.” (Pen. Code, § 1237, subd. (b).) He does not, however, articulate any right—substantial or otherwise—that would be affected by this order. He argues only that it would be in the court’s own interest to have accurate records, and that his substantial rights are “addressed simply by comparing the result and effect of the court granting it compared to the court not granting it, and in this case that means that if [the motion] were granted, then the trial court records would correctly reflect that Appellant did not enter any plea to any charge filed in the case . . . compared to how it erroneously reflects now showing he entered a guilty plea to an offense charged in the

underlying case, and the difference between the trial court finding Appellant guilty of an offense charged in the underlying case and the trial court not ever finding Appellant guilty of any offense charged in the case.” As we understand it, defendant is arguing that correction of the record is *itself* a substantial right, for which proposition he cites *People v. Walker* (1901) 132 Cal. 137 (*Walker*) and *People v. O’Brien* (1907) 4 Cal.App. 723 (*O’Brien*). These cases do not support defendant’s position.

In *Walker*, the defendant appealed an order denying a motion to vacate the judgment and to correct the record to show that he was not properly arraigned for judgment. (*Walker, supra*, 132 Cal. at pp. 139–140.) The appellate court concluded this affected “important rights of the defendant who, when thus called upon, may show either that he is insane or that there are grounds for a new trial, or for arrest of judgment.” (*Id.* at pp. 140–141.) The court reversed the orders denying the defendant’s motions and remanded the matter for a new arraignment for judgment. (*Id.* at p. 143.) Here, in contrast, defendant has not identified any rights that are implicated in the trial court’s denial of his motion.

In *O’Brien*, the defendant appealed an order *granting* the prosecutor’s ex parte motion to correct the record reflecting the entry of defendant’s plea of guilty to a murder charge, and his sentencing to life imprisonment. The record was corrected to state the defendant entered a “plea of guilty of the crime of murder” rather than a “plea of murder.” (*O’Brien, supra*, 4 Cal.App. at p. 725.) Without discussion, the appellate court concluded the order affected the defendant’s substantial rights, citing *Ward v. Dunne* (1902) 136 Cal. 19. (*Id.* at p. 726.) That was a mandamus proceeding in which the defendant appealed the entry of a nunc pro tunc order of judgment because the original judgment had not been properly processed and entered. The court concluded the order was appealable because “while under the order he can be committed to Folsom and there imprisoned, without the order he cannot be imprisoned.” (*Ward v. Dunne, supra*, 136 Cal. at p. 21.) It thus appears that in *O’Brien*, the court concluded the order was appealable not because the *order correcting* the judgment affected his rights—which it did not, as the court later concluded (*O’Brien, supra*, 4 Cal.App. at p. 729)—but because

the record *being corrected* had affected the defendant's rights. We disagree with that conclusion, but in any event, *O'Brien* is of no help to defendant. As he admits, the record here in question is merely a "docket entry" stating he pled guilty to Count II in Action Number L289653. Defendant concedes the docket is correct insofar as it reflects he pled guilty to a violation of Penal Code section 422 as a misdemeanor, and he does not challenge his conviction, his sentence, or any other aspect of the record. He describes no consequences whatsoever that would flow from *not* correcting the alleged error, and we are not aware of any rights that would be affected by the trial court's order.

It is possible, however, that defendant has not identified the true reason for the motion, which may be to set up yet another challenge to the judgment on his plea. Reading between the lines, we can anticipate he would claim that the crime to which he pled guilty was not properly charged. If this is defendant's purpose, there is an additional reason the order is not appealable. "[T]he rule is well established that an order made after judgment is not appealable where the motion merely asks the court to repeat or overrule the former ruling on the same facts. . . . ' "Substantial rights" under subsection three of section 1237 are not affected when defendant's objections concern matters that could have been reviewed on timely appeal from the judgment. [Citations.]' " (*People v. Cantrell* (1961) 197 Cal.App.2d 40, 43.) If there was a question as to whether the crime for which defendant was convicted had been properly charged, it could have been raised on appeal and therefore cannot be initiated in the guise of a motion to correct a clerical error. (*Cantrell, supra*, 197 Cal.App.2d at p. 43; *People v. Gallardo* (2000) 77 Cal.App.4th 971, 980–981 ["A ruling denying a motion to vacate judgment would qualify semantically as an order after judgment affecting substantial rights, but such an order ordinarily is not appealable when the appeal would merely bypass or duplicate appeal from the judgment itself." (Footnote omitted)].)

The appeal is dismissed. The motion to proceed in propria persona is denied as moot.

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.