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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.

ISAAC FERMIN ARRIAGA,

Defendant and Appellant.

E056914

(Super.Ct.No. E056914)

OPINION

APPEAL from the Superior Court of Riverside County. F. Paul Dickerson III,  
Judge. Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

This is a second appeal by defendant and appellant Isaac Fermin Arriaga.

Defendant was originally convicted of two counts of committing a lewd act on a child  
under the age of 14 years (Pen. Code, § 288, subd. (a)); one count of committing a lewd

act on a child age 14 or 15 years while being at least 10 years older than the child (Pen. Code, § 288, subd. (c)(1)); one count of willfully inflicting corporal injury upon a spouse (Pen. Code, § 273.5, subd. (a)); three counts of willfully inflicting cruel or inhuman corporal punishment upon a child (Pen. Code, § 273d, subd. (a)); two counts of willfully causing child abuse likely to produce great bodily harm (Pen. Code, § 273a, subd. (a)); and two counts of willfully disobeying a restraining order (Pen. Code, § 166, subd. (a)(1)). As a result, defendant was sentenced to a total term of 15 years eight months in state prison and was ordered to pay various restitution fines and fees. (*People v. Arriaga* (Oct. 25, 2011, E051724) [nonpub. opn.] )

In his first appeal, defendant claimed, and the People conceded, that the abstract of judgment contained several errors. We agreed and directed the superior court clerk to amend the abstract of judgment and forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, we affirmed the judgment.

In June 2012, defendant filed a postjudgment motion in the trial court to strike or modify his restitution fines and fees based on his inability to pay. Defendant appeals from the denial of that motion. We find no error and affirm.

## DISCUSSION<sup>1</sup>

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)

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<sup>1</sup> The details of defendant's criminal conduct are not relevant to the limited legal issue raised in this appeal.

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 requesting this court conduct an independent review of the record. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his brief, defendant asserts grounds that were not raised in the trial court following the denial of his postjudgment motion, but grounds that should have been raised by appellate counsel in his first appeal. Specifically, he claims: (1) his trial counsel was ineffective; (2) multiple punishment is barred by Penal Code section 654; (3) cumulative errors resulted in a violation of his right to a fair trial; and (3) his appellate counsel was ineffective in failing to present valid grounds on direct appeal. In support, he has attached several exhibits, including a grant deed, a victim statement and the victim's psychological report, a translated letter, our decision in the first appeal, the trial court's decision regarding his petition for a writ of habeas corpus, and two letters from appellate counsel.

First, the issues raised by defendant cannot be reached in this purported appeal from denial of a postjudgment motion for an order striking or modifying his restitution fines and fees. Defendant has had the benefit of a timely appeal from the judgment. The order defendant now asks us to review is not appealable. (*People v. Garrett* (1998) 67 Cal.App.4th 1419, 1421-1422.) A ruling denying a motion to modify a judgment is not appealable when the appeal would merely bypass or duplicate the appeal from the

judgment itself. (*People v. Thomas* (1959) 52 Cal.2d 521, 527; *People v. Gallardo* (2000) 77 Cal.App.4th 971, 980-981.)

Second, the restitution fines and fees were terms of the original judgment, which should have been challenged in the direct appeal. Failure to raise these issues on direct appeal forfeited the issues. Where a judgment has been appealed, defendant's failure to timely raise the challenge timely precludes his belated attempt to appeal from an order denying modification. To hold otherwise would condone extending the jurisdictional time limit for filing appeals through the bootstrapping vehicle of a postjudgment motion to modify. (See *People v. Djekich* (1991) 229 Cal.App.3d 1213, 1219.)

Third, the trial court lacked jurisdiction to consider modification of the judgment. It is well settled that once judgment is rendered, the sentencing court lacks jurisdiction to vacate or modify the sentence except pursuant to Penal Code section 1170, subdivision (d). (*Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834-1835.) The only other exception relates to situations where a defendant has timely appealed and the reviewing court remands the matter with directions to modify the judgment. After a judgment has been affirmed on appeal, the trial court lacks jurisdiction to act further in a case, except to ensure that the judgment has been enforced. (*People v. Maggio* (1929) 96 Cal.App. 409, 411; see also *People v. Langdon* (1967) 250 Cal.App.2d 595.) The trial court thus lacked jurisdiction to entertain defendant's postjudgment motion to modify the sentence.

We have examined the entire record and are satisfied that no arguable issues exist, and that defendant has, by virtue of counsel's compliance with the *Wende* procedure and

our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278.)

DISPOSITION

The judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

RICHLI  
J.