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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO ARREDONDO,

Defendant and Appellant.

F071498

(Kern Super. Ct. No. BF158765B)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. John S. Somers, Judge.

Lynette Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Ian Whitney, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Poochigian, J. and Franson, J.

Appellant Ricardo Arredondo appeals his sentence on one count of being an accessory to a felony (Pen. Code, § 32).<sup>1</sup> Specifically, appellant contends the trial court improperly issued a restraining order against him pursuant to section 136.2. The People agree, further noting the provision is at least partially redundant given the trial court properly entered a “stay-away” order as part of appellant’s probation terms. For the reasons set forth below, we strike the contested restraining order and otherwise affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Relevant to this case, appellant is an associate of Monique Farias. Ms. Farias is the biological mother of Elizabeth A., a two-year-old child. However, through separate guardianship proceedings, Elizabeth A. was placed in the temporary care of Terry and Kimberly Finch.

On January 5, 2015, Ms. Farias and appellant arrived at the Finch’s home to visit with Elizabeth. Ms. Farias asked to take the child to McDonald’s, but was told no. She was, however, allowed to play with Elizabeth in a private room, with the door shut. Ms. Farias took this opportunity to take Elizabeth and flee from the home. During this time, appellant remained in a separate room with the Finches.

Appellant was initially charged with kidnapping, conspiracy to commit kidnapping, and burglary. Following his preliminary hearing, the complaint was amended to add the accessory charge to which appellant pled guilty. As part of the guilty plea, the remaining charges were dismissed.

At sentencing, the prosecutor requested, and was granted, the entry of a five-year criminal protective order under section 136.2. This timely appeal followed.

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

## **DISCUSSION**

Section 136.2 provides multiple bases for issuing criminal restraining orders, two of which are relevant to this matter. Under subdivision (a)(1), upon “a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter” may issue a restraining order consistent with the statute. Similarly, under subdivision (i)(1), in all cases involving a conviction for domestic violence or falling within a specified set of crimes, “the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim.”

Appellant argues, and the People agree, that appellant’s crimes do not fall within the enumerated set identified in section 136.2, subdivision (i)(1), and that the underlying crimes do not qualify as crimes of domestic violence because appellant is not related to either the minor child or her guardians. (See § 13700 [defining “domestic violence” as “abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship”].) Appellant and the People further agree that section 136.2, subdivision (a)(1) is only appropriately invoked during the pendency of a criminal case, and thus is unavailable as a sentencing provision. (See *People v. Selga* (2008) 162 Cal.App.4th 113, 118; *People v. Stone* (2004) 123 Cal.App.4th 153, 159-160.)

We have reviewed the bases for the People’s concessions in this matter and find they are reasonable.

## **DISPOSITION**

The restraining order issued pursuant to Penal Code section 136.2 is stricken. In all other respects, the judgment is affirmed.