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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MANUEL LOPEZ,

Defendant and Appellant.

G052099

(Super. Ct. No. M15845)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Richard M. King, Judge. Appeal dismissed.

Jose Manuel Lopez, in pro. per.; and Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Defendant Jose Manuel Lopez appeals from the court’s postjudgment order denying his motion under Penal Code section 1473.6¹ to vacate the judgment against him based on newly discovered evidence. Under section 1265, the superior court lacked jurisdiction to enter the order. Accordingly, we dismiss defendant’s appeal.

FACTUAL AND PROCEDURAL HISTORY

A jury convicted defendant of assault with a firearm (with a gang enhancement), street terrorism, second degree robbery (with a gun enhancement), carrying a loaded firearm on one’s person with a prior conviction, and possession of a firearm in violation of his probation terms.² We affirmed the judgment on appeal. (*People v. Lopez* (1999) 71 Cal.App.4th 1550.)

On October 17, 2014, defendant filed with the superior court a 171-page motion under section 1473.6, which permits a person who is no longer unlawfully imprisoned or restrained to prosecute a motion to vacate a judgment based on newly discovered evidence of misconduct or fraud by a government official. The court denied defendant’s section 1473.6 motion on three independent grounds. First, defendant had already filed an appeal, a petition for a finding of factual innocence, and two habeas petitions; therefore his section 1473.6 motion was a “repetitious, collateral attack on a final judgment,” constituting a “piecemeal presentation of his claims.” Second, insofar as the motion sought to challenge the denial of a prior habeas petition, defendant was required to file a new habeas petition in the Court of Appeal. Third, the motion was

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All statutory references are to the Penal Code.

²

The jury acquitted defendant of an additional charge of street terrorism. As to the charged crime of attempted first degree murder, the jury convicted him of a lesser included offense (assault with a firearm). The jury found not true an alleged gang enhancement to the robbery conviction.

untimely and defendant had failed to meet his burden of proof and make the required showings under section 1473.6.

Defendant appealed from the court's order. We appointed counsel to represent him. Counsel did not argue against defendant, but advised the court he found no issues to argue on defendant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant filed a supplemental brief, arguing, inter alia, that as a result of "newly discovered evidence of unethical serious government misconduct, the judgment does not withstand the verdict."

DISCUSSION

Under section 1265, subdivision (a), "[I]f a judgment has been affirmed on appeal no motion shall be made or proceeding in the nature of a petition for a writ of error coram nobis shall be brought *to procure the vacation of that judgment*, except in the court which affirmed the judgment on appeal." (Italics added.)

Because the superior court lacked jurisdiction to entertain defendant's motion to vacate the judgment that had previously been affirmed by this court on appeal, the court's order was void. (*People v. Langdon* (1967) 250 Cal.App.2d 595; *Airlines Reporting Corp. v. Renda* (2009) 177 Cal.App.4th 14, 20 [order by court lacking subject matter jurisdiction is void].) Because a void order does not affect the substantial rights of defendant, it is not appealable under section 1237.³ (*People v. Thornton* (1965) 233 Cal.App.2d 1, 3.) We therefore dismiss the appeal.

³

A postjudgment order is appealable, if at all, only under section 1237, subdivision (b), which permits an appeal from a postjudgment order if the order affects the substantial rights of the defendant.

DISPOSITION

The appeal is dismissed.

IKOLA, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.