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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY HOBLEY,

Defendant and Appellant.

B296439

(Los Angeles County
Super. Ct. No. MA022729)

THE COURT:

Defendant and appellant Timothy Hobley (defendant) appeals from an order denying his petition for writ of habeas corpus. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues. On June 14, 2019, we notified defendant of his counsel's brief and gave him leave to file, within 30 days, his own brief or letter stating any grounds or argument he might wish to have considered. That time has elapsed, and defendant has submitted no brief or letter. We have reviewed the entire record, and finding no arguable issues, affirm the order.

In 2002, defendant was convicted after a jury trial of two counts of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))¹ and two counts of making criminal threats (§ 422). The sentencing court sentenced defendant under the Three Strikes law to 25 years to life in prison, enhanced by 12 years due to the use of a deadly weapon and having suffered a prior serious felony, to run consecutively. The court also imposed a \$7,200 restitution fine pursuant section 1202.4, subdivision (b)(1).

In January 2019, defendant filed a petition for writ of habeas corpus in superior court, asking the court to vacate the \$7,200 restitution fine. Relying on the recently decided case of *People v. Dueñas* (2019) 30 Cal.App.5th 1157, defendant claimed that the imposition of the restitution fine without a finding of his ability to pay was fundamentally unfair and unconstitutional.

On February 26, 2019, the superior court denied the petition, on the grounds that it did not have jurisdiction to resentence defendant and if it did have jurisdiction, the petition would still be denied. The court found that at the time of sentencing defendant did not object to the imposition of the fine, or claim that he was unable to pay it, and that the sentencing court properly considered his future ability to pay.

Defendant filed a timely notice of appeal from the trial court's order. In his declaration filed in support of his request for a certificate of probable cause, defendant stated that at the time of sentencing, he did not have a job, never had a bank account, and was on "general relief." He added that at present, in prison,

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

he could not afford food or hygiene supplies. Defendant also declared that although not reflected in the record, he objected to the fine at the time of sentencing, and the sentencing court did not hold a hearing on his ability to pay.²

After examination of the entire record, we are satisfied that defendant's appellate counsel has fully complied with her responsibilities, and that no arguable issue exists. We conclude 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; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The order is affirmed.

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ASHMANN-GERST, Acting P. J., CHAVEZ, J., HOFFSTADT, J.

² As the restitution fine imposed was greater than the minimum required by section 1202.4, subdivision (b)(1), defendant was entitled to object and demonstrate his inability to pay the fine. We have taken judicial notice of the opinion in the appeal taken from the 2002 judgment. (See *People v. Hogley* (July 1, 2003, B160419) [nonpub opn.].) The record does not support defendant's claim that he challenged the trial court's imposition of the fine or the alleged refusal by the trial court to hold a hearing on his ability to pay. He has thus failed to preserve a challenge to the restitution fine. (See *People v. Avila* (2009) 46 Cal.4th 680, 729.)