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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG JAMES DUNNE,

Defendant and Appellant.

B288550

(Los Angeles County
Super. Ct. No. VA 125477)

APPEAL from an order of the Superior Court of Los Angeles County, Debra Cole-Hall, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

An information filed October 9, 2012 charged defendant and appellant Craig James Dunne with one count of attempted murder (Pen. Code, §§ 187, subd. (a), 664)¹ and two counts of assault with a deadly weapon. (§ 245, subd. (a)(1).) Pursuant to a plea bargain, Dunne pleaded no contest in March 2013 to attempted murder, and the trial court dismissed the remaining charges and sentenced Dunne to 26 years in prison. After a hearing, the trial court ordered Dunne to pay direct restitution totaling \$214,720.88 to his two victims to compensate for their medical expenses and lost wages. On January 17, 2018, Dunne filed a motion for a restitution hearing in which he requested that the court reconsider the restitution order. Dunne contended that the court erred by failing to take into account his ability to pay, and further that the restitution was excessive and violated Dunne's rights under the Eighth and Fourteenth Amendments. The trial court denied the motion.

Dunne filed a timely notice of appeal. Dunne's appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) raising no issues on appeal and requesting that we independently review the record. On May 22, 2018, we sent a letter to Dunne and to counsel. In the letter, we directed counsel to immediately send the record on this appeal and a copy of the *Wende* brief to Dunne and informed him that he had 30 days to submit by letter or brief any ground of appeal, contention or argument he wished us to consider. We have received no communication from Dunne.

The trial court did not abuse its discretion by denying Dunne's motion for a new hearing on restitution. The Eighth

¹ Unless otherwise specified, subsequent statutory references are to the Penal Code.

Amendment prohibition on excessive fines does not apply to victim restitution as in this case. Furthermore, restitution was mandatory in Dunne’s case regardless of his ability to pay, and Dunne presented no evidence to show that the amount the trial court initially assessed was inaccurate. (§ 1202.4, subds. (a)(3)(B), (f), (g).)

The court ordered Dunne to pay \$214,720.88 as victim restitution (§ 1202.4, subd. (f)), not as a restitution fine. (§ 1202.4, subd. (b).) The difference is crucial. A restitution fine is a form of criminal penalty, but “victim restitution is a civil remedy.” (*People v. Harvest* (2000) 84 Cal.App.4th 641, 647.) The Eighth Amendment prohibition against excessive fines applies only to “payment[s] to a sovereign as punishment for some offense.” (*United States v. Bajakajian* (1998) 524 U.S. 321, 327 [118 S.Ct. 2028, 2033, 141 L.Ed.2d 314], superseded by statute on another ground, as stated in *United States v. Del Toro-Barboza* (9th Cir. 2012) 673 F.3d 1136, 1154.) Victim restitution is paid directly to the victim, not to the state (see § 1202.4, subds. (a)(1), (f)), and does not constitute criminal punishment. (See *People v. Harvest, supra*, 84 Cal.App.4th at pp. 649–650.)

Nor is Dunne’s ability to pay relevant. A court may in certain circumstances take the defendant’s ability to pay into account when determining the amount of a restitution fine. (See § 1202.4, subds. (c), (d)). But “[a] defendant’s inability to pay shall not be a consideration in determining the amount of a [victim] restitution order.” (§ 1202.4, subd. (g).)

We have reviewed the entire record on appeal. We are satisfied that Dunne’s counsel has fully complied with his responsibilities and that no arguable appellate issue exists. (See

Wende, supra, 25 Cal.3d at p. 441; *People v. Kelly* (2006) 40 Cal.4th 106, 110.)

DISPOSITION

The order of the trial court is affirmed.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.