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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MATTHEW NORMAND
PAVON HUBERT,

Defendant and Appellant.

B292155

Los Angeles County
Super. Ct. No. MA073557

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell, Susan Sullivan Pithey, Idan Ivri, and Peggy Z. Huang, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Matthew Normand Pavon Hubert asks us to remand for a hearing to determine his ability to pay fines and fees imposed after he pled guilty to aiding and abetting a burglary. Because we conclude the court impliedly found defendant had the ability to pay the disputed fines and fees, we affirm.

BACKGROUND¹

By felony complaint dated April 5, 2018, the People alleged defendant had committed three counts of first-degree residential burglary with a person present (Pen. Code,² § 459; counts 1–3). Defendant pled not guilty. On May 30, 2018, defendant withdrew his not guilty plea and entered a negotiated plea of no contest under *People v. West* (1970) 3 Cal.3d 595 to count 1.

Defendant signed a change of plea form that laid out the terms of his plea agreement. Paragraph 2(f), which defendant initialed, explained, “I understand that the court will order me to pay the following amounts (if an amount is not yet known, ‘TBD’ for ‘to be determined’ is entered next to the \$).” No dollar amounts or TBD notations were listed.

At the plea hearing, the court explained that defendant would have to pay victim restitution in an amount to be determined at a restitution hearing. Defendant said he understood and accepted that condition. (See *People v. Villalobos*

¹ Because the facts of the case are not relevant to the issue on appeal, we do not address them.

² All undesignated statutory references are to the Penal Code.

(2012) 54 Cal.4th 177, 185 [“ ‘restitution’ and ‘restitution fines’ are distinct, nonoverlapping penalties and ... advisement of one does not entail advisement of the other”].) The court did not allude to imposing any fines or fees as part of the plea agreement.

On June 20, 2018, at a hearing before a different bench officer, the court sentenced defendant to the low term of two years for count 1. The court ordered him to pay a \$300 restitution fine (§ 1202.4, subd. (b)), a \$40 operations assessment (§ 1465.8, subd. (a)(1)), a \$30 conviction assessment (Gov. Code, § 70373), and a crime prevention fund fine (§ 1202.5, subd. (a)) of \$10 plus penalty assessments and the state surcharge.³ The court dismissed counts 2 and 3.

Defendant filed a timely notice of appeal, and we appointed counsel to represent him. On February 1, 2019, appellate counsel filed a motion in the trial court to stay or vacate the fines and fees. (§ 1237.2.) The court denied the motion.

DISCUSSION

Defendant argues we must remand for a hearing to determine his ability to pay the \$300 restitution fine and \$70 in

³ In a supplemental letter brief, defendant argues that the court’s imposition of the restitution fine and court fees did not violate the plea agreement because they are statutorily-mandated consequences of a criminal conviction. (See *People v. Villalobos*, *supra*, 54 Cal.4th at p. 183.) Then, he argues that the imposition of the crime prevention fund fine *did* violate the agreement. But the crime prevention fund fine is also mandatory. (§ 1202.5, subd. (a) [“the court shall order” any defendant convicted of an enumerated theft offense “to pay a fine of ten dollars (\$10)” if the defendant can pay it].) As they are all mandatory, either all these court costs violated the agreement, or none of them did.

court fees under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 because the court failed to do so below. We disagree.

When a defendant is convicted of burglary (§ 459), the court must impose a \$10 crime prevention fund fine “in addition to any other penalty or fine imposed.” (§ 1202.5, subd. (a).) “If the court determines that the defendant has the ability to pay all or part of the fine, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant’s financial ability.” (*Ibid.*)

Here, the court imposed the full \$10 fine plus \$31 in penalty assessments and the state surcharge. That choice implied a “finding defendant had the ability to pay. [Citations.]” (*People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1531; see Evid. Code, § 664; *People v. Hennessey* (1995) 37 Cal.App.4th 1830, 1836 [“Absent a showing to the contrary, we presume the trial court fulfilled its duty to make the requisite determination.”].)

A defendant’s ability to pay the crime prevention fund fine and required penalty assessments is evaluated in light of his total financial obligations. (*People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1249.) Total financial obligations include the conviction assessment (Gov. Code, § 70373), the operations assessment (§ 1465.8), and the restitution fine (§ 1202.4). (*People v. Castellanos, supra*, 175 Cal.App.4th at pp. 1531–1532.) We presume the court accounted for these obligations when it concluded defendant could pay the \$10 fine and \$31 in penalty assessments and the state surcharge. (*Ibid.*) And, because the court concluded defendant had the ability to pay \$41 *more* than the \$300 fine and \$70 in fees he now challenges, it follows that

the court found he had the ability to pay the \$300 fine and \$70 in fees as well.

DISPOSITION

The judgment is affirmed.

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LAVIN, Acting P. J.

WE CONCUR:

EGERTON, J.

DHANIDINA, J.