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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Appellant,

v.

SERGIO JOSE RENTERIA,

Defendant and
Respondent.

B287918

(Los Angeles County
Super. Ct. No. BA453118)

APPEAL from an order of the Superior Court of Los Angeles County, Sam Ohta, Judge. Reversed.

Jackie Lacey, District Attorney of Los Angeles County, Phyllis C. Asayama and Cassandra Thorp, Deputy District Attorneys, for Plaintiff and Appellant.

Ricardo D. Garcia, Los Angeles County Public Defender, Albert J. Menaster and Dylan Ford, Deputy Public Defenders, for Defendant and Respondent.

I. INTRODUCTION

Defendant Sergio Renteria pleaded no contest in Department 123 of the Los Angeles County Superior Court to one count of residential burglary and was placed on probation. One condition of that probation required Renteria to pay restitution for whatever losses the victim suffered. Because the property stolen during the burglary was recovered, and any other potential losses were unknown at the time of defendant's initial sentencing, the court set a restitution setting hearing for approximately six weeks after sentencing to determine the amount, if any, of losses not yet restituted. Renteria failed to appear at the restitution setting hearing, as well as several subsequent hearings.

After Renteria's multiple failures to appear and other violations of his probation, the court imposed a sentence of four years in state prison, but suspended its execution and reinstated probation to give Renteria one final chance. A few months later, while he was still on probation, Renteria pleaded guilty to another burglary charge, this time in Department 50 of the Los Angeles County Superior Court. The judicial officer in Department 50 sentenced Renteria to two years in state prison for the burglary offense and terminated probation on the residential burglary conviction.

Thereafter, a restitution setting hearing took place in Department 123. That court found it no longer had jurisdiction to modify its prior restitution order to specify the amount owed to the victim because restitution was a term of probation, and Department 50 had terminated that probation.

The People appeal the court’s determination that it lacked jurisdiction to modify the restitution order. We hold Renteria is estopped from contesting jurisdiction given his probation violations and failures to appear, and reverse.

II. BACKGROUND

A. Proceedings in Department 123

On March 1, 2017, in Department 123, Renteria pleaded no contest to one count of residential burglary, a felony in violation of Penal Code section 459.¹ The record contains no information regarding the offense conduct, or what property was taken by defendant. The trial court suspended imposition of sentence and placed Renteria on probation for three years.

While explaining to Renteria the fines that would be imposed, the court asked the prosecutor if there was any damage that needed to be compensated. The prosecutor replied, “I know the property was recovered, but can we just have a setting in a month or so?” The court turned back to Renteria, and said, “It’s possible there may be loss to the victim as a result of your act here, and if there is, then the victim’s entitled to restitution. So the [prosecutor] is asking for a setting to make sure that we don’t have any such loss.”

The court then accepted Renteria’s plea of no contest, suspended imposition of sentence, placed defendant on probation, and announced the conditions of probation. With regard to restitution, the court said, “I’m going to order you back, Mr. Renteria, on April 11. So you’re going to come back to me on

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

April 11, 2017, for a progress report. We will set that date as a restitution hearing setting date, and then on that date we'll also order a probation report." The minute order from the sentencing hearing reads, "As to Count (01): . . . Defendant placed on formal probation for a period of 003 years under the following terms and conditions: [¶] . . . [¶] Make restitution to victim pursuant to PC Section 1202.4(f) in an amount to be determined at hearing set 04/11/17, at 8:30 A.M., in Department 123."

As part of his probation, Renteria was ordered to participate in, and reside in housing provided by, the Office of Diversion and Reentry (ODR) program. He was released to an ODR representative, but left the housing and abandoned the program a short while later.² Renteria failed to appear at the restitution setting hearing on April 11, 2017. The court revoked Renteria's probation and issued a bench warrant. It then recalled the bench warrant on May 4, 2017, when Renteria was present before the court in custody. On May 17, 2017, Renteria appeared before the court again. The court revoked and reinstated probation with all the original terms and conditions, but extended the term of probation. Renteria was ordered to appear on June 27, 2017 for a progress report from the ODR program and the Probation Department.

² A later probation report stated Renteria had been transported to transitional housing on March 20, 2017 and left on March 21, 2017. Defense counsel told the court that Renteria actually stayed at the housing for two weeks but was not properly signing in and out, which is why the records reflected him leaving after one day. Regardless, it is undisputed Renteria left ODR housing soon after entering the program in violation of his probation.

On June 27, 2017, Renteria again failed to appear. The court revoked probation and issued a bench warrant. Renteria was taken into custody, and the court recalled the warrant on July 3, 2017 when Renteria appeared in court. On July 5, 2017, Renteria was present in court when the matter was called for a probation violation hearing setting, and the matter was continued to July 26, 2017 on the court's own motion for preparation of a supplemental probation report. On July 26, 2017, Renteria appeared and the matter was continued to August 16, 2017.

On August 16, 2017, Renteria was present in court. The court revoked Renteria's probation, imposed a sentence of four years in prison but suspended execution of that sentence for the remaining period of probation, and reinstated probation. The court told Renteria: "I'm going to impose the middle term of four years and give you one more try. If you don't [comply with the ODR program and terms of probation] this time, I'm sending you to prison for four years. Do you understand?" Renteria replied, "Yes, I do." The court then released Renteria to an ODR representative.

Renteria then failed to appear for a third time at his next progress report hearing on September 26, 2017, and the trial court again revoked probation and issued a bench warrant. Renteria was again taken into custody, and the court recalled the warrant on October 11, 2017 when Renteria appeared in court. Renteria thereafter remained in custody, awaiting the probation report the court had ordered.

B. Proceedings in Department 50

On October 27, 2017, Renteria was present before another judicial officer in Department 50, where he pleaded guilty to a new crime (a burglary). Several codefendants pleaded guilty at the same time. Before Renteria's plea was taken, the prosecutor told him: "With your probation matter, you face a maximum of five years in local custody." Renteria said he understood. The prosecutor then told Renteria: "If [you are] already on probation or parole for any other case, your plea today could be a violation of probation or parole and could result in additional custody time." Renteria again said he understood.

The judicial officer in Department 50 sentenced Renteria to two years in prison on the new burglary charge, and simultaneously terminated his probation in two other matters, one of which was the residential burglary case pending in Department 123. Department 50 did not mention the four-year sentence imposed by Department 123 as to which execution had been stayed pending successful completion of probation. Specifically Department 50 ordered: "Mid-term two years at the local level, credit 36, forthwith. . . . [¶] The following two probationary matters are terminated, BA453118 [the Department 123 matter at issue in this appeal], BA443545." Although the court reporter's transcript does not indicate any admission or finding of a probation violation, the minute order reads: "Defense and counsel admit to violation of probation in open court. [¶] Court finds defendant in violation of probation. [¶] Probation revoked [¶] Probation modified as follows: [¶] Probation terminated [¶] [¶] The court finds the defendant in violation of probation for failing to obey all laws [¶] Based on the prison sentence given in case number BA462147-01 [the

new burglary charge in Department 50], probation is ordered terminated.”

C. Further Proceedings in Department 123

On December 1, 2017, Department 123 continued Renteria’s case for further proceedings regarding restitution to December 15, 2017. At the December 15, 2017 hearing, the People stated the victim was seeking \$5,476.04 in restitution.³ The court, summarizing the case while looking at the file, said, “[Renteria was] placed on probation back in March of 2017. I did order the defendant to pay restitution to the victims, but no amounts were set.” Further colloquy between the court and counsel took place as follows.

“[Court]: Hold on one second. I am looking at Sergio Renteria. October 27, 2017 the court terminated the probation.

“[Defense counsel] He picked up another case [¶] . . . [¶] and probation was terminated.

[¶] . . . [¶]

“[Court]: It terminated in Department 50 on October 27. [¶] . . . [¶] I have no jurisdiction.

“[Prosecutor]: There is no jurisdiction at all.

“[Court]: “So I’ll take it off calendar. You do the research. If you think that there is some jurisdiction I have to order restitution on a case in which probation has already been terminated, you can recalendar it.

“[Prosecutor]: Okay. I will.”

³ The record does not indicate what this amount consists of or includes.

The People did not present any of the requested research to the trial court or seek to recalendar the matter for a further hearing. They instead filed a notice of appeal.⁴

III. DISCUSSION

A. Standard of Review

Generally, a restitution order is reviewed for abuse of discretion. (*People v. Fortune* (2005) 129 Cal.App.4th 790, 794.) However, “when the propriety of a restitution order turns on the interpretation of a statute, a question of law is raised, which we review de novo.” (*In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016.) Because we must interpret the interplay between several statutes to determine the trial court’s continuing jurisdiction to set a specific amount of restitution, our review is de novo.

While the People did not object to the court’s order finding it no longer had jurisdiction to impose restitution—indeed, the prosecutor agreed there was no such jurisdiction—a prosecutor’s failure to object does not bar the correction of a potentially invalid restitution order on appeal. (*People v. Moreno* (2003) 108 Cal.App.4th 1, 9–10.)

⁴ Renteria claims the notice of appeal is untimely because the notice was required to be filed within 60 days of the termination of his probation, as opposed to within 60 days of the court’s December 15, 2017 order. This claim is meritless. The People are appealing the December 15, 2017 order, not the termination of probation, and their appeal is therefore timely. (See Cal. Rules of Court, Rule 8.308, subd. (a).)

B. Renteria's Sentence Included an Order for Restitution

As a preliminary matter, Renteria disputes whether Department 123 imposed a restitution obligation as part of his sentencing on March 1, 2017. Although the minute order states restitution was imposed, Renteria argues the minute order should be disregarded because the court did not explicitly state during the oral pronouncement of sentence that Renteria was being ordered to pay restitution.

Although as a general “principle . . . where the clerk’s and reporter’s transcripts conflict, the latter controls, when, under the circumstances, it is the more reliable” (*People v. Carter* (2003) 30 Cal.4th 1166, 1199), this principle is not a mechanical rule. (*People v. Smith* (1983) 33 Cal.3d 596, 599.) Rather, “ ‘as a general rule . . . when . . . the record is in conflict it will be harmonized if possible [W]hether the recitals in the clerk’s minutes should prevail as against contrary statements in the reporter’s transcript[] must depend upon the circumstances of each particular case.’ ” (*Ibid.*)

We see no conflict between the reporter’s transcript and the minute order. The record indicates the trial judge meant to order, and did order, Renteria to pay restitution for whatever losses the victim may have suffered in an amount to be determined later. First, when explaining the conditions of probation, the court said that if there was a loss to the victim as a result of Renteria’s actions, the victim would be entitled to restitution from Renteria. The court thereafter ordered Renteria back to court on April 11, 2017 for, among other things, a restitution hearing to fix the amount of restitution to be ordered.

The minute order, to which Renteria lodged no objection in subsequent trial court proceedings, states Renteria was ordered to “[m]ake restitution to victim pursuant to PC Section 1202.4(f) in an amount to be determined at hearing set 04/11/17” At the hearing on December 15, 2017, the court similarly acknowledged—without objection from Renteria’s counsel—that Renteria had previously been ordered to pay restitution but the amount had not yet been set.

Accordingly, the reporter’s transcript and the minute order are not discordant. When imposing sentence, the court ordered Renteria to pay restitution for whatever losses the victim may have suffered, to be determined on April 11, 2017, and the minute order accurately reflects the pronounced sentence.

C. The Constitutional and Statutory Scheme Governing Restitution as a Condition of Probation

Before addressing whether Department 123 still had jurisdiction following the termination of probation to fix a particular amount of restitution, we first summarize the constitutional and statutory schemes governing the determination of that issue.

1. *The Constitution and Proposition 9*

“In November 2008, the voters adopted Proposition 9, popularly known as Marsy’s Law. Proposition 9 substantially amended article I, section 28, of the California Constitution, the ‘Victims’ Bill of Rights.’ These amendments make clear that a crime ‘victim’ is entitled, among other things, ‘[t]o restitution’ (Cal. Const., art. I, § 28, subd. (b)(13))” (*People v. Runyan* (2012) 54 Cal.4th 849, 858.) Proposition 9 amended the Constitution to provide that “all persons who suffer losses as a

result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer. [¶] Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a victim suffers a loss.” (Cal. Const., art. I, § 28, subd. (b)(13)(A)–(B).)

Portions of the People’s opening brief cite to superseded constitutional language enacted in 1982 by Proposition 8, also known as the “Victims’ Bill of Rights,” which similarly addressed restitution to crime victims. While Proposition 9 made significant amendments to other portions of the Victim’s Bill of Rights/Proposition 8, its change to a victim’s right to restitution was far more modest. The language regarding victim restitution in Propositions 8 and 9 is identical, except that Proposition 9 struck one phrase that had permitted courts not to order restitution when compelling and extraordinary reasons existed.⁵

⁵ Compare Cal. Const., art 1, § 28, former subd. (b) [“It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer. [¶] Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss, unless compelling and extraordinary reasons exist to the contrary.”] with Cal. Const., art. I, § 28, subd. (a)(13)(A-B) [“It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer. [¶] Restitution shall be ordered from the convicted wrongdoer in

As the stricken language does not pertain to the facts before us or the trial court’s order, we (like the parties) rely on case law interpreting Proposition 8’s otherwise identical language and the enabling statutes promulgated by the Legislature to implement Proposition 8. (See *People v. Giordano* (2007) 42 Cal.4th 644, 652–654 [explaining statutory enactments following Proposition 8]; *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766, 778–781 (*Hilton*) [same].)

2. Applicable Statutory Provisions

“ ‘ “Upon conviction it is the duty of the court to pass sentence on the defendant and impose the punishment prescribed.” ’ ” (*People v. Duff* (2010) 50 Cal.4th 787, 795.) Except in circumstances not relevant here, section 1202.4 requires that when sentencing a defendant “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim” (§ 1202.4, subd. (f).) Once a defendant is sentenced, “[p]ursuant to section 1170, subdivision (d), a trial court generally ‘does not have open-ended jurisdiction to modify a sentence; the court’s jurisdiction expires after 120 days.’ ” (*People v. Waters* (2015) 241 Cal.App.4th 822, 827 (*Waters*)). However, certain exceptions to this general rule exist with regard to victim restitution orders. (*Ibid.*)

If, at the time of the defendant’s sentencing, the amount of loss cannot be ascertained, “the restitution order shall include a provision that the amount shall be determined at the direction of the court.” (§ 1202.4, subd. (f).) In such a case, “the court shall

every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.”].

retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined.” (§ 1202.46.) Section 1202.46 further provides that it “does not prohibit a victim, the district attorney, or a court on its own motion from requesting correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order . . . pursuant to Section 1202.4.”

Where the defendant is placed on probation, section 1202.4, subdivision (m), provides that the trial court must incorporate the restitution order as one of the conditions of probation. Section 1203.3 provides that “[t]he court may modify the time and manner of the term of probation for purposes of measuring the timely payment of restitution obligations” (§ 1203.3, subd. (b)(4).) Subdivision (b)(5) of section 1203.3 clarifies that “[n]othing in this section shall be construed to prohibit the court from modifying the dollar amount of a restitution order pursuant to subdivision (f) of Section 1202.4 at any time during the term of the probation.” (§ 1203.3, subd. (b)(5).)

3. *Case Law Interpreting the Statutory Scheme*

Because section 1202.46 states that a court retains jurisdiction to impose or modify restitution until such time as the losses may be determined, and to correct the omission of a restitution order “at any time,” whereas section 1203.3, subdivision (b)(5) permits a court to modify a restitution order that is part of a probationary sentence only “during the term of the probation,” prior courts have found it necessary to reconcile these competing timeframes. In doing so, they have held that when a defendant is sentenced to probation, section 1203.3 limits the court’s jurisdiction to order or modify restitution to the

duration of the defendant's probationary term. (*Waters, supra*, 241 Cal.App.4th at p. 831; *Hilton, supra*, 239 Cal.App.4th at p. 776.)⁶

In *Hilton*, the defendant pleaded no contest to offenses related to his driving under the influence, during which he struck a pedestrian. (239 Cal.App.4th at p. 769.) The court placed the defendant on probation on the condition he pay restitution in an amount to be determined at a later restitution hearing. The court ultimately ordered \$3,215 in restitution, which the defendant fully paid during his probationary term. (*Ibid.*) Meanwhile, the injured pedestrian filed a civil suit that was settled for \$3.5 million after defendant's probation expired. Following the settlement, the victim filed a motion in the criminal case seeking an order imposing \$886,000 in additional restitution for attorneys' fees and other items, which the trial court granted. (*Id.* at p. 770.)

The *Hilton* court found that "once a defendant's probationary term has expired, a trial court no longer has jurisdiction to modify the defendant's probation, and the court must discharge the defendant from probation." (239 Cal.App.4th at p. 772.) Although a trial court granting probation must impose restitution where appropriate as a condition of probation, "this mandate is necessarily subject to the preexisting probation law

⁶ Courts have reached a different result when the sentence does not involve probation and section 1203.3's limitation to modification during the term of probation does not apply. (See, e.g., *People v. Bufford* (2007) 146 Cal.App.4th 966 [§ 1203.3 did not apply where defendant sentenced to prison, and therefore court retained jurisdiction under § 1202.4 to set restitution after defendant completed her sentence].)

that once the probationary term *has expired*, a trial court lacks jurisdiction over a probationer, lacks jurisdiction to impose restitution or additional restitution, and lacks jurisdiction to modify probation to impose any such restitution.” (*Id.* at p. 780.)⁷

Although section 1204.4 implemented Proposition 8’s victim right to restitution, it “implemented the constitutional right by requiring the trial court, since it chose the disposition of probation, to impose restitution as a condition of probation. The court was then required to exercise probation jurisdiction accordingly, subject to preexisting probation law. This included the law the trial court lacked jurisdiction to modify probation or, therefore, impose restitution, after the defendant’s probationary term expired.” (*Hilton, supra*, 239 Cal.App.4th at pp. 780–781.) *Hilton* further held “[s]ection 1202.46 too must be harmonized with the preexisting statutory and case law concerning probation, with the result that that section does not authorize a trial court to impose restitution once the defendant’s probationary term has expired.” (*Id.* at pp. 781–782.)

In *Waters*, the defendant pleaded no contest to charges she embezzled from her employer. (241 Cal.App.4th at p. 825.) The defendant was sentenced to probation, but the trial court failed to order the defendant to pay restitution to her employer. Several years after the defendant successfully completed her probation,

⁷ The preexisting law cited by *Hilton* holding that modification of a probationary term after probation had expired was an act in excess of the trial court’s jurisdiction included *In re Bakke* (1986) 42 Cal.3d 84, 90, fn. 5; *In re Griffin* (1967) 67 Cal.2d 343, 346; *People v. Lewis* (1992) 7 Cal.App.4th 1949, 1955–1956; and *People v. White* (1982) 133 Cal.App.3d 677, 682–683. (*Hilton, supra*, 239 Cal.App.4th at pp. 772–780.)

she petitioned to reduce her felony conviction to a misdemeanor pursuant to section 1203.4. (*Ibid.*) In response, the court indicated it intended to order restitution and would not grant the section 1203.4 petition unless restitution was paid in full. (*Ibid.*) The defendant initially stipulated to restitution, but then withdrew her stipulation and contested its imposition. (*Id.* at p. 826.) The trial court thereafter set victim restitution at \$20,080. (*Ibid.*)

Agreeing with the reasoning of *Hilton*, the *Waters* court found the restitution order was in excess of the trial court's jurisdiction. (241 Cal.App.4th at p. 829.) *Waters* rejected the argument that the victim restitution order was not prohibited because it was not a condition of probation, noting "the Attorney General has not identified any authority which would allow a trial court to order victim restitution outside of probation in this situation. Although section 1202.4, subdivision (f) does provide that the court shall require the defendant to make restitution 'in every case in which a victim has suffered economic loss as a result of the defendant's conduct,' it does not expressly grant trial courts the power to impose restitution in probation cases other than as a condition of probation. Moreover, subdivision (m) of section 1202.4 suggests that, in this context, victim restitution can only be ordered as part of probation." (*Id.* at p. 830.)

Waters also rejected the notion that section 1202.46 permitted an order of restitution after probation terminated: "That statute . . . provides 'the court shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined.' (§ 1202.46.) Section 1202.46 further states that it should not be construed to prohibit 'correction, *at any time*, of a

sentence when the sentence is invalid due to the omission of a restitution order or fine’ (*Italics added.*) The statute’s use of the phrase ‘at any time’ cannot be read in isolation and must be harmonized with the preexisting statutory and case law concerning probation, including section 1203.3, which limits the court’s power to modify probation and restitution after the expiration of the probationary period.” (*Waters, supra*, 241 Cal.App.4th at pp. 830–831.)

In this case, the facts are closely analogous to *Hilton* and *Waters*. In *Waters*, no restitution was ordered during probation. In *Hilton*, a specific amount of restitution was ordered during probation. Here, restitution was ordered but no amount specified during probation. The People do not argue *Hilton* or *Waters* was wrongly decided. They instead argue the facts here are distinguishable because determining the amount of restitution after the expiration of Renteria’s probation was “completing” the restitution-related condition of his probationary sentence, and thus different than imposing or modifying an amount of restitution after the expiration of probation.

We respectfully disagree. Imposing \$20,800 in restitution, as was done in *Waters*, was a modification to the terms of probation. Adding \$886,000 to a previously imposed restitution order, as occurred in *Hilton*, was also a modification. It is equally plain, in our view, that adding \$5,476.04 to a previously undetermined amount would modify the restitution order made during the term of probation and was therefore permissible only during the term of probation. Under any commonsense definition of “modify,” what the People requested here was a modification subject to the limitations of section 1203.3. (E.g., Black’s Law Dict. (11th ed. 2019) [defining “modification” as a “change to

something; an alteration or amendment”]; Merriam-Webster Unabridged Dict. Online (2019) <<http://unabridged.merriam-webster.com/unabridged/modification>> [defining “modification” as “the act or action of changing something without fundamentally altering it”], as archived at <<https://perma.cc/49AS-SZVW>>.)

D. Renteria is Estopped from Challenging the Modification of Restitution

Even where a trial court lacks jurisdiction to modify a restitution order following the end of the probationary term, our Supreme Court has held a defendant may be estopped from challenging such a modification. (See *People v. Ford* (2015) 61 Cal.4th 282 (*Ford*).) The People argue that Renteria’s failures to appear, and violation of other probation terms, estop him from asserting a lack of jurisdiction. We agree.⁸

1. Types of Jurisdiction

In *Ford*, the Supreme Court addressed a restitution dispute similar to the one at issue here and declined to decide whether the trial court lacked jurisdiction to modify a restitution order after probation expired because the defendant was estopped from challenging the trial court’s ability to make such a modification. (61 Cal.4th at p. 287.) *Ford* distinguished between two ways in which a court may lack jurisdiction, namely a lack of fundamental jurisdiction versus performing an act in excess of

⁸ Because we find Renteria is estopped from asserting a lack of jurisdiction, we need not reach the question as to which we requested supplemental briefing: whether Department 50’s October 27, 2017 order terminating probation was an unauthorized sentence such that section 1203.3’s limitation to modification during the term of probation would not apply.

jurisdiction. (See *id.* at pp. 286–287.) “A court lacks jurisdiction in a fundamental sense when it has no authority at all over the subject matter or the parties, or when it lacks any power to hear or determine the case. [Citation.] . . . [¶] Even when a court has fundamental jurisdiction, however, the Constitution, a statute, or relevant case law may constrain the court to act only in a particular manner, or subject to certain limitations. [Citations.] When a trial court has fundamental jurisdiction but fails to act in the manner prescribed, it is said to have acted ‘in excess of its jurisdiction.’ ” (*Ibid.*)

The trial court in Renteria’s case had fundamental jurisdiction, as “it is well settled that the expiration of a probationary period does not terminate a court’s fundamental jurisdiction.” (*Ford, supra*, 61 Cal.4th at p. 287.) As for whether the trial court could act in excess of its jurisdiction, “[t]he doctrine of estoppel to contest jurisdiction may apply to ‘a party who seeks or consents to action beyond the court’s power as defined by statute or decisional rule’ ” in the period after probation has terminated. [Citation.]” (*Ibid.*) Relying on this holding in *Ford*, the People argue that Renteria should be estopped from challenging an order setting restitution after the termination of probation.

2. Defendant’s Probation Violations and Failures to Appear Created an Estoppel

In *Ford*, the defendant was estopped from challenging the court’s jurisdiction after the termination of his probation because he consented to continue the restitution hearing to a date past the term of his probation. (61 Cal.4th at p. 289.) Other cases on which the People rely have similar facts. (E.g., *In re Bakke*,

supra, 42 Cal.3d 84, 89—90 [probationer asked court to stay execution of his jail term to date beyond end of his probation]; *In re Griffin, supra*, 67 Cal.2d 343, 347—349 [defendant himself requested continuance of restitution setting hearing to a date beyond termination of probation].)

While conceding he performed extremely poorly on probation and failed to appear multiple times, Renteria argues he is not estopped because he did not seek or consent to any action after probation terminated regarding restitution. In Renteria's view, it is the People and not him who bear responsibility for the failure to hold a restitution setting hearing before his probation was terminated.

Both the *Waters* and *Hilton* courts found the defendants in those cases were not estopped from challenging the exercise of jurisdiction to impose restitution. In *Waters*, the court found the defendant was not estopped because the “defendant played no role in delaying the order of restitution.” (241 Cal.App.4th at p. 831.) Similarly, in *Hilton*, the court distinguished situations “in which [the defendant] violated probation, the trial court revoked probation, or there was a change of circumstances warranting an extension of the probationary term” and “express[ed] no opinion as to what result would obtain in any of those circumstances.” (239 Cal.App.4th at 777, fn. 6.)

Here, in contrast, Renteria played a central role in the delay. He violated probation, leading to proceedings in two different Departments, and he failed to appear on multiple occasions. These probationary violations and failures to appear interfered with the ability to recalendar the restitution setting hearing at which he failed to appear and were de facto consent to

deferring the restitution setting hearing to a later date. We are unpersuaded by Renteria's attempt to excuse his delays by saying the People should have acted with more alacrity to recalendar the hearing before probation was terminated, or should have demanded the court proceed without his presence. Renteria created the scheduling problems in the first place by failing to appear at the original restitution setting hearing, failing to appear two more times after that, and violating his probation on several occasions (including being charged in yet another burglary case) necessitating additional delay for the preparation of supplemental probation reports. The People did not instigate any of those delays.

Renteria's argument is essentially that the People should have acted more quickly to unravel the multiple scheduling headaches he himself created. We agree they should have, as it would have resolved this issue nearly two years ago and mooted the issue we now address. But permitting Renteria to avoid his constitutional obligation to make restitution when he played a substantial role in creating the scheduling problems that led to the restitution setting hearing taking place after the termination of his probation would work an obvious inequity. We do not construe Renteria's probation violations and failures to appear as an open-ended estoppel permitting the setting of a specific restitution amount at any future date. The delay here was minimal and proportional to the scheduling problems Renteria generated. The restitution setting hearing occurred approximately one month after Renteria's last violation of probation, and two months after he appeared in court following his last arrest for failing to appear. Renteria's role in precipitating the delay in having a restitution setting hearing

estops him here from contesting the court's jurisdiction to fix a specific amount of restitution owed.

IV. DISPOSITION

The court's order finding no jurisdiction to fix the amount of restitution is reversed, and the matter remanded to hold a hearing to set that amount.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

ROTHSCHILD, P. J.

CHANEY, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.