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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

THEODORE VINICIO
REYNOLDS,

Defendant and Appellant.

2d Crim. No. B293263
(Super. Ct. No. MA066202)
(Los Angeles County)

Theodore Vinicio Reynolds appeals a judgment following conviction of felony assault with a deadly weapon, and misdemeanor driving under the influence of an alcoholic beverage. (Pen. Code, § 245, subd. (a)(1)¹; Veh. Code, § 23152, subd. (a).)

This appeal concerns Reynolds's alcohol-fueled altercation with his father during a visit at his father's home. Following the preliminary examination, Reynolds pleaded nolo contendere to

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

two of the three counts charged by information. The sole issue on appeal is the trial court's imposition of fines and assessments without first finding that Reynolds had the ability to pay. (*People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1164, 1168.) We conclude that Reynolds has forfeited this issue and affirm.

FACTUAL AND PROCEDURAL HISTORY

On May 4, 2015, Reynolds visited his father at his father's home in Lancaster. Following his consumption of a bottle of whiskey, Reynolds argued with his father and assaulted him outside the residence. Reynolds then drove his vehicle into his father's vehicle. Neighbors summoned police assistance.

On November 16, 2015, pursuant to a plea agreement, Reynolds pleaded nolo contendere to felony assault with a deadly weapon, and misdemeanor driving under the influence of an alcoholic beverage. The written plea form executed by Reynolds stated that the court would order him to pay restitution to the state, a court operations assessment, and a court facilities assessment, among other fees and assessments. By initialing the box regarding specific fees and assessments, Reynolds expressly acknowledged that he "must prepare financial disclosure statements to assist the court in determining [his] ability to pay."

The trial court suspended imposition of sentence and placed Reynolds on formal probation for three years. The court also ordered Reynolds to serve 45 days of community labor and to complete an alcohol treatment program. In addition, the court imposed a \$300 restitution fine, a \$300 probation revocation fine (suspended), a \$40 court operations assessment, and a \$30 court facilities assessment, among other fines and assessments. (§§ 1202.4, subd. (b), 1202.44, 1465.8, subd. (a); Gov. Code,

§ 70373.) The court also ordered Reynolds to pay the costs of probation and incarceration pursuant to section 1203.1c.

On November 15, 2016, the probation officer submitted a report indicating that Reynolds had not complied with many of his probation terms, including participating in community service and payments of fees and assessments, amounting to \$4,647. This amount included \$4,197 in probation-related costs. The court revoked and then reinstated probation with additional terms and conditions.

On September 18, 2018, the probation officer again submitted a report indicating that Reynolds had not complied with many of his probation terms. The amount of his remaining fine was now \$4,567. Following a hearing and argument by the parties, the court terminated probation and sentenced Reynolds to a low two-year prison term. The court also ordered that the previously ordered fines and assessments, as well as the probation revocation fine, were due. Reynolds did not object to the fines and assessments.

On October 16, 2018, Reynolds filed a notice of appeal. In his opening brief, Reynolds challenged the amount of presentence custody credits awarded and the imposition of fees and assessments without an ability-to-pay hearing. Reynolds also filed motions in the trial court regarding these matters. (§ 1237.2; *People v. Gutierrez* (2019) 35 Cal.App.5th 1027, 1037, fn. 4 [where issue of fines or assessments is sole issue on appeal, trial court retains jurisdiction to correct same].) On June 14, 2019, the court corrected the award of presentence custody credits and filed an amended abstract of judgment accordingly. In addition, the court minute order of that date states that “[t]he court takes no action as to fines and fees.”

Reynolds appeals and contends that the trial court erred by imposing fines and assessments without inquiring sua sponte into his ability to pay. He asserts that this error constitutes prejudicial federal and state constitutional error.

DISCUSSION

I.

Reynolds contends that the trial court violated his constitutional rights by imposing a \$300 restitution fine and \$70 in non-punitive assessments without first determining his ability to pay. He asserts that he has been denied due process of law and is entitled to a hearing to determine his ability to pay.

Reynolds relies upon *People v. Dueñas*, *supra*, 30 Cal.App.5th 1157 [homeless defendant whose cerebral palsy rendered her unable to work and whose inability to pay fines and fees was directly related to her poverty].) *Dueñas* held that imposing assessments pursuant to section 1465.8, subdivision (a) (court operations) and Government Code section 70373 (court facilities funding) without a hearing on the defendant's ability to pay violates due process of law pursuant to the federal and state constitutions. (*Dueñas*, at p. 1168.) Neither statute expressly prohibits the trial court from considering the defendant's ability to pay. Pursuant to section 1202.4, subdivisions (b)(1) and (c), the court is expressly prohibited from considering the defendant's ability to pay in imposing a restitution fine unless the fine imposed exceeds \$300. *Dueñas* held that the court must stay execution of the restitution fine unless or until the prosecutor demonstrates that the defendant has the ability to pay. (*Id.* at p. 1172.)

Here the trial court imposed a minimal restitution fine and \$70 in assessments. The court also ordered that Reynolds pay

the costs of probation services. (§ 1203.1c.) Unlike *Dueñas*, Reynolds did not object to these financial fines and fees in the trial court. (*People v. Torres* (2019) 39 Cal.App.5th 849, 860, rev. den. Dec. 11, 2019.) His failure to challenge the assessments and fines imposed at sentencing precludes his doing so on appeal. (*People v. Aguilar* (2015) 60 Cal.4th 862, 864 [challenge to probation-related costs and fees paid to trial counsel]; *Torres*, at p. 860.) A timely objection is required to claim constitutional violations such as Reynolds makes here. (*People v. Trujillo* (2015) 60 Cal.4th 850, 859 [no constitutional rights are implicated by counsel not objecting at sentencing to imposition of fees]; *Torres*, at p. 860 [same].) Moreover, the written plea form alerted Reynolds that he must provide financial statements to the court to determine his ability to pay specific fines and assessments. Having not objected to his probation-related fees, Reynolds surely would not complain to an additional \$370 in a fine and assessments.

In *People v. Castellano* (2019) 33 Cal.App.5th 485, the court excused the defendant's failure to raise the issue in the trial court. *Castellano* reasoned that the defendant's challenge is based on a newly announced constitutional principle that could not have been reasonably anticipated at the time of trial. (*Id.* at p. 489.) *People v. Frandsen* (2019) 33 Cal.App.5th 1126 reached a different conclusion. (*Id.* at p. 1155 ["traditional and prudential virtue" requires parties to raise issue in the trial court prior to seeking appellate review].)

It is understandable that trial counsel representing criminal defendants in cases prior to *Dueñas* were more concerned with issues of guilt and sentencing than in court assessments and restitution fines. Nevertheless, the issue was

there to be raised. Reynolds has forfeited this argument. (*People v. Avila* (2009) 46 Cal.4th 680, 729 [defendant forfeits issue by failing to object to imposition of restitution fine based on inability to pay]; *People v. Gutierrez, supra*, 35 Cal.App.5th 1027, 1033 [forfeiture of ability-to-pay argument by failure to object].)

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Shannon Knight, Judge

Superior Court County of Los Angeles

Patricia Ann Dark, under appointment by the Court
of Appeal, for Defendant and Appellant.

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