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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.

KARL KATSUMI OGURA,

Defendant and Appellant.

2d Crim. No.B285578
(Super. Ct. No. KA089210)
(Los Angeles County)

A jury found Karl Katsumi Ogura guilty of first degree murder (Pen. Code, § 187, subd. (a)¹) and found a gang enhancement allegation to be true (§ 186.22, subd. (b)(1)(C)). The trial court sentenced Ogura to 25 years to life plus 10 years for the gang enhancement. The court imposed restitution and parole revocation fines of \$240. (§§ 1202.4, 1202.45.)

On appeal we reversed Ogura's conviction for first degree murder. We gave the People the option of retrying Ogura for first degree murder, or if the People do not so elect within 30 days of

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

the remittitur, the offense shall be reduced to second degree. We also reduced the restitution fine from \$240 to \$200. (*People v. Ogura* (Nov. 13, 2014, B239122) [nonpub. opn.].) The offense was reduced to second degree murder.

On August 3, 2017, Ogura made a motion to reconsider the restitution fine. The motion was based on the lack of a hearing on his ability to pay and the constitutionality of excess fines. The trial court denied the motion on the ground that \$200 is the minimum fine, and a hearing on the ability to pay is only required when a fine exceeds the minimum. (§ 1202.4, subd. (c).)

We appointed counsel to represent Ogura in this appeal. After counsel's examination of the record, she filed an opening brief raising no issues.

Ogura filed a supplementary brief raising the same grounds as his motion. Section 1202.4, subdivision (c) expressly states that the ability to pay may be considered only in increasing the minimum fine. A \$200 fine is not constitutionally excessive.

We have reviewed the entire record and are satisfied that Ogura's attorney has fully complied with her responsibilities and no arguable issue exists. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment (order) is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Mike Camacho Jr., Judge
Superior Court County of Los Angeles

Susan K. Shaler, under appointment by the Court of
Appeal, for Defendant and Appellant.
No appearance for Plaintiff and Respondent.