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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE LIEBENSBERGER,

Defendant and Appellant.

B293322

(Los Angeles County
Super. Ct. No. BA458460)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig J. Mitchell, Judge. Affirmed.

The Law Office of B.C. McComas and Brian C. McComas, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie C. Brenan and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

George Liebensperger was convicted by jury of one count of damaging jail property. (Pen. Code, § 4600, subd. (a).)¹ In this appeal, he challenges only the trial court’s imposition of assessments and fines without determining his ability to pay, pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*).² Appellant concedes that he did not raise his ability to pay in the trial court. Therefore, we hold that he has forfeited the issue.

BACKGROUND³

Appellant was charged by information with one count of destroying prison or jail property. (§ 4600, subd. (a).) The information further alleged that he had suffered two prior convictions of serious felonies (§§ 667.5, subd. (c), 1192.7) and two prior strikes (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and served two prior prison terms (§ 667.5, subd. (b)).

The jury found appellant guilty. Appellant waived a court trial on the prior conviction allegations and admitted the prior strike convictions. The trial court sentenced appellant to a term of four years and imposed the requisite assessments and fines, including a

¹ Unspecified statutory references will be to the Penal Code.

² Appellant previously raised the *Dueñas* issue in an appeal of a different matter. (*People v. Liebensperger* (B293320, Aug. 21, 2019) 2019 Cal.App.Unpub. LEXIS 5565 (*Liebensperger I*)). In that matter, we held that appellant had forfeited the issue by failing to raise it in the trial court. (*Id.* at pp. *10-*11.)

³ We need not set forth the facts of the underlying offense, which are not pertinent to this appeal.

restitution fine of \$300, pursuant to section 1202.4, subdivision (b), and victim restitution of \$1,312.50.

DISCUSSION

“*Dueñas* held that ‘due process of law requires [a] trial court to . . . ascertain a defendant’s present ability to pay before it *imposes*’ (1) ‘court facilities and court operations assessments’ (under . . . § 1465.8 and Gov. Code, § 70373, respectively), or (2) a restitution fine (under . . . § 1202.4). [Citations.]” (*People v. Hicks* (2019) 40 Cal.App.5th 320, 325.) Appellant contends that the matter should be remanded for the trial court to determine whether he has the ability to pay the assessments and fines. Appellant concedes that he did not object to the assessments and fines in the trial court, but he argues that *Dueñas* announced a new constitutional principle that could not have been anticipated at the time of sentencing.

In *People v. Frandsen* (2019) 33 Cal.App.5th 1126 (*Frandsen*), our colleagues in Division Eight of this Appellate District addressed the same arguments appellant makes. The court concluded that the defendant forfeited the ability to challenge mandatory assessments and a restitution fine by failing to object at sentencing. (*Id.* at pp. 1153-1155.) As we stated in appellant’s other appeal, we agree with *Frandsen* that the failure to object to the imposition of the assessments and fines in the trial court resulted in the forfeiture of the claim. (*Id.* at p. 1153; see *Liebensperger I, supra*, 2019 Cal.App.Unpub. LEXIS 5565, at p. *11.) We disagree with appellant that he raises a pure question of

law. Whether he has the ability to pay is a factual question that should have been raised in the trial court.

“[N]othing in the record of the sentencing hearing indicates that [appellant] was foreclosed from making the same request that the defendant in *Dueñas* made in the face of those same mandatory assessments.” (*Frandsen, supra*, 33 Cal.App.5th at p. 1154.) As *Frandsen* reasoned, “*Dueñas* was foreseeable. *Dueñas* herself foresaw it.” (*Ibid.*) We therefore reject appellant’s request to remand the matter.

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

CURREY, J.