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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY HOBLEY,

Defendant and Appellant.

B272321

(Los Angeles County
Super. Ct. No. MA022729)

THE COURT:*

Defendant and appellant Timothy Hobley (defendant) appeals from an order denying his motion and petition for writ of habeas corpus, in which he requested reduction of the restitution fine imposed at sentencing in 2002. After defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), raising no issues, we notified defendant of his counsel's brief and gave him leave to file his own brief or letter stating any grounds or argument he might wish to have considered. Defendant submitted a supplemental brief raising

*ASHMANN-GERST, Acting P.J., CHAVEZ, J., HOFFSTADT, J.

the same issues rejected by the trial court. We have reviewed defendant's supplemental brief and the entire record, and find no merit to defendant's contentions. Finding no other arguable issues, we affirm the judgment.

In 2002, defendant was convicted of three counts of assault with a deadly weapon and two counts of criminal threats, and was sentenced to a term of 36 years to life in prison. Among other things, the trial court ordered defendant to pay a \$7,200 restitution fine, calculated as \$200 for each year of imprisonment. At the sentencing hearing, after defendant voiced his concern that he did not have the ability to pay that amount, the trial court informed defendant that the fine would be taken out of defendant's prison earnings. Defendant replied, "All right," and did not claim any disability or other cause that would prevent him from working in prison.

In April 2016, defendant filed a letter and petition for writ of habeas corpus, seeking a reduction of the restitution fine. Defendant alleged that the cost of living in prison was high, such that he could barely afford hygiene, and that the only damage caused by his crimes were broken windows, which he had paid to fix. Defendant also alleged that the trial court had failed to hold a required hearing to determine his ability to pay the fine, and that the statute of limitations had run on the enforcement of the fine. The trial court considered the letter/motion and petition, and found that at the time of sentencing, the court considered defendant's future ability to pay the fine, that the amount imposed was appropriate and commensurate with the offense and time imposed, and that defendant's bare assertion of his inability to pay was insufficient to require a hearing. On April 25, 2016, the trial court denied the motion and petition, and defendant filed a timely notice of appeal from the order.

Under former (and current) Penal Code section 1202.4, subdivisions (b), (c), and (d), the trial court was expressly authorized to impose a restitution fine of \$200 per year of imprisonment, without holding a separate hearing for the fine.¹ Although the court was required to consider the defendant's ability to pay, among other factors, express findings were not required, and it was the defendant's burden to demonstrate inability to pay. (§ 1202.4, subd. (d).) In the absence of a contrary showing, the court was entitled to presume that defendant would have the ability to pay the restitution fine from future wages, including those he would earn in prison. (*People v. Douglas* (1995) 39 Cal.App.4th 1385, 1397; *People v. Frye* (1994) 21 Cal.App.4th 1483, 1486-1487; § 1202.4, subd. (d).) The 10-year statute of limitations on the enforcement of judgments does not apply to a restitution fine. (§ 1214, subd. (e)(2); see *People v. Douglas*, *supra*, at p. 1397.)

We have examined the entire record and are satisfied that defendant's appellate counsel has fully complied with her responsibilities, and that no arguable issue exists. We conclude that defendant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

The order is affirmed.

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¹ See Statutes 2000, chapter 198, section 4.