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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.

ISAAC TESFAYE,

Defendant and Appellant.

B270443

(Los Angeles County
Super. Ct. No. BA328605)

APPEAL from an order of the Superior Court of
Los Angeles County. Scott M. Gordon, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Scott A. Taryle and Nicholas J. Webster,
Deputy Attorneys General, for Plaintiff and Respondent.

In an information filed by the Los Angeles County District Attorney's Office, defendant and appellant Isaac Tesfaye was charged with 15 counts of various offenses related to his management of a nonprofit organization, the African Community Resource Center (ACRC). In a plea agreement, defendant pleaded guilty to a single offense, grand theft of property exceeding \$400 from the ACRC (count 15; Pen. Code, § 487, subd. (a)).¹ The remaining counts were dismissed.

The trial court placed defendant on formal probation for a period of three years, with a number of conditions, including that he serve 365 days in county jail. Defendant was granted 120 days of presentence custody credits. The trial court also imposed various fines and fees. In a separate hearing, the trial court ordered defendant to pay \$72,600 in restitution to the victim.

In 2015, defendant filed a petition alleging that he had successfully completed his probation term and moved to have the charged reduced to a misdemeanor and dismissed under section 1203.4, subdivision (a)(1). The petition was denied. Defendant timely filed a notice of appeal, arguing that the trial court erred in denying his petition to dismiss the charge pursuant to section 1203.4, subdivision (a).

We affirm.

PROCEDURAL BACKGROUND

When defendant pled guilty in 2011, his attorney explained her understanding of the plea: "As a condition of probation, [defendant] will be pleading to one count of grand theft person, a felony, a wobbler, and \$66,000 restitution, plus statutory interest

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

for about a year-and-a-half.” The trial court addressed defendant soon after this comment: “[M]y understanding is that you’re going to enter a plea to count 15 . . . that you agree that there is a restitution obligation of 66,000, plus the statutory interest, that you will receive a sentence of one year in the county jail as a term and condition of the standard three year probation.” Defendant agreed.

Defendant then pled guilty to count 15. The trial court asked if there were any issues before sentencing, and defense counsel replied: “The only thing left is the restitution. Everything has been agreed upon, my understanding.” The trial court then placed defendant on probation and orally imposed the following conditions: Defendant must serve 365 days in the county jail, obey all “laws, orders, rules and regulations of the probation department,” pay a \$200 restitution fine, and pay a \$200 parole restitution fine (stayed). The trial court set a hearing to determine the amount of restitution that defendant owed.

On February 24, 2012, the trial court found defendant’s restitution obligation was \$66,000, plus 10 percent simple interest, for a total of \$72,600.

Defendant moved to Virginia, and his probation was transferred to the Commonwealth of Virginia.

On October 2, 2014, the trial court found that defendant had paid his court fees and fines and satisfied all probation requirements “and that the defendant’s victim restitution obligation, pursuant to Penal Code section 1202.4[, subdivision] (f), is currently being paid directly to the victim.” Thus, the trial court would allow the probation to “expire naturally” on November 6, 2014.

On August 24, 2015, the Probation Department of the Commonwealth of Virginia advised defendant that he had successfully completed probation.

In 2015, defendant filed a petition alleging that he had successfully completed his probation term and moved to have the charge reduced to a misdemeanor and dismissed pursuant to section 1203.4, subdivision (a)(1). In the hearing on the dismissal petition, defense counsel argued that the \$72,600 in restitution was not a condition of probation. The prosecutor argued that, based upon the record in this case, restitution was a condition of probation and, in any case, restitution is “always a condition of probation.” Because defendant had not yet paid the restitution, his motion to dismiss should be denied.

The trial court denied defendant’s motion, finding that his restitution payment of \$72,600 was part of his probation. The trial court reasoned that under section 1202.4, subdivision (m), restitution is always imposed as a condition of probation. The trial court also noted that defendant was ordered to follow all laws and orders as a condition of his probation and that he violated that condition by failing to pay the restitution. Thus, the trial court concluded: “It is clear to the court from . . . reviewing the record that restitution was part of the negotiated plea as between the parties; that, in the sentencing, the court did, in fact, place the defendant on probation, indicated that a restitution order pursuant to 1202.4 was part of the probationary sentence; then placed it on a hearing, at which subsequently an amount was determined and an order was made. [¶] The court finds that it clear that it was a probationary condition but that, aided by 1202.4(m), makes it clear that it is. The defendant has not completed probation. Therefore, the petition is denied.”

DISCUSSION

The restitution to ACRC was a condition of defendant's probation. Defense counsel so stated when defendant pled guilty in 2011. And, when the trial court confirmed the restitution obligation, defendant agreed.

Defendant contends that the payment of restitution was not a condition of probation. After all, when the trial court orally took defendant's plea and pronounced the conditions of his probation, it did not explicitly state that restitution was a condition of probation. Instead, the trial court set the restitution hearing for another date, where the amount was later determined and imposed. Defendant thus theorizes that section 1202.4, subdivision (m), does not apply.

We are not convinced. Section 1202.4, subdivision (m), provides, in relevant part: "In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation." In other words, "[i]f the defendant is granted probation, the court must make payment of restitution and the restitution fine conditions of probation." (*People v. Chambers* (1998) 65 Cal.App.4th 819, 822.)

Payment of restitution was a condition of probation. By failing to pay \$72,600 in restitution, defendant did not meet the conditions of his probation.² Thus, the trial court rightly denied defendant's petition to dismiss.

² Because defendant did not fulfill this condition of his probation, *People v. Mgebrov* (2008) 166 Cal.App.4th 579 and *People v. McLernon* (2009) 174 Cal.App.4th 569 do not apply.

DISPOSITION

The order is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J. *
GOODMAN

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