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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.

TY PORTER WILCOX,

Defendant and Appellant.

2d Crim. No. B272456
(Super. Ct. No. 2012042759)
(Ventura County)

Ty Porter Wilcox appeals victim restitution orders following his guilty plea to committing lewd acts (Pen. Code, § 288, subd. (a)) with four children under the age of 14--K.H. (count 1), C.H. (count 3), T.D. (count 4), and H.H. (count 6). He also admitted a special allegation that he had “substantial sexual conduct” with H.H. (§ 1203.066, subd. (a)(8).) The trial court sentenced him to an aggregate prison term of 14 years. We conclude, among other things, that the trial court did not abuse its discretion in awarding noneconomic damages to the four victims. We affirm.

FACTS

Wilcox committed lewd acts with four girls--K.H., C.H., T.D., and H.H., all under 14 years of age. His lewd acts included sucking K.H.'s and C.H.'s breasts, grabbing H.H.'s buttocks and rubbing her vagina, and offering T.D. money to take off her clothes.

The probation report indicates "[h]e continued his molesting behavior for over a decade; . . . he continued to access the victims in his home." The children were particularly vulnerable. Most of his acts were committed against girls who were family members in a family member's home, a place where children should have an expectation of safety.

K.H. said Wilcox "solicited her to expose herself and requested naked photos of her 20 to 30 times when she was between 7 and 13 years old." Years after these incidents, she experienced "anxiety." She had "attended counseling" and "may consider going again in the future."

Wilcox pled guilty to committing lewd acts (§ 288, subd. (a)) and his plea agreement included the advisement that he "may be ordered to pay restitution."

The probation department recommended noneconomic victim restitution in the following amounts: \$300,000 for K.H.; \$100,000 for C.H.; \$100,000 for T.D.; and \$50,000 for H.H.

After Wilcox's sentencing hearing, the trial court held a restitution hearing. Wilcox did not attend. His counsel argued the restitution amounts the probation department recommended were excessive. He claimed restitution for noneconomic damages should be awarded in the following amounts: \$10,000 for K.H.; \$10,000 for C.H., "even though she doesn't want anything"; \$5,000 for T.D.; \$20,000 for H.H.

The trial court found Wilcox’s sexual abuse of K.H. was “one of the more aggravated of this case” and set her restitution at \$35,000. It said Wilcox’s acts against C.H. were “egregious” and set her restitution at \$30,000. It said Wilcox “solicited” T.D. “several times” and set her restitution at \$20,000. It found Wilcox had “solicited” H.H. and touched “her vagina” and set her restitution at \$40,000.

DISCUSSION

Noneconomic Victim Restitution

Wilcox contends the trial court abused its discretion in ordering restitution for noneconomic damages in arbitrary amounts. He notes there was no victim or expert testimony at the restitution hearing. He claims the People did not present sufficient evidence to support the noneconomic damages. We disagree.

“Noneconomic damages are ‘subjective, non-monetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation.’” (*People v. Smith* (2011) 198 Cal.App.4th 415, 431.) “Unlike restitution for economic loss, . . . loss for noneconomic loss is subjectively quantified.” (*Id.* at p. 436.) “No fixed standard exists for deciding the amount of these damages.” (*Ibid.*) “As a result, all presumptions are in favor of the decision of the trial court.” (*Ibid.*) “We therefore affirm a restitution order for noneconomic damages that does not, at first blush, shock the conscience or suggest passion, prejudice or corruption on the part of the trial court.” (*Ibid.*)

“Restitution hearings are intended to be informal.” (*People v. Weatherton* (2015) 238 Cal.App.4th 676, 684.) “““Section 1202.4 does not, by its terms, require any particular kind of proof.

However, the trial court is entitled to consider the probation report’ “ . . . When the probation report includes information on the amount of the victim’s loss and a recommendation as to the amount of restitution, the defendant must come forward with contrary information to challenge that amount.”””” (Ibid.)

The People did not call witnesses at the restitution hearing. But the probation report documented the substantial impact of Wilcox’s crimes on these victims. It indicates that “[h]e created four young victims who *are dealing with long lasting effects of his abuse*. The victims have a blurred sense of who to trust, who to love and he caused suffering across three generations among four separate households.” (Italics added.)

The record contains oral statements made at a sentencing hearing by a victim and a mother of the girls Wilcox targeted. It includes written victim impact statements.

The People also highlight specific statements victims had made to law enforcement and probation officers about the impact of the crimes. At the restitution hearing, Wilcox’s counsel did not object or move to exclude those statements. (*People v. Homick* (2012) 55 Cal.4th 816, 862 [failure to object in the trial court forfeits objections raised for the first time on appeal].)

A mother told the trial court at a sentencing hearing that Wilcox’s actions “scarred [her] daughters for life.” H.H. appeared at that hearing and said Wilcox’s actions “affected [her] in a lot of different ways with trusting and . . . [her] relationships with people.” She said it was “hard for [her] to focus during school.” It was one of the reasons leading to the breakup of her relationship with her boyfriend.

The People highlight additional statements victims made about the impact of Wilcox’s crimes. K.H. said “[w]hat [Wilcox] did to [her] [when she was in the third grade] made [her] feel

slutty.” She cannot go into a store where men are smiling at her without feeling “they want sex from me.” T.D. said as a result of his conduct she “started feeling alone as if [she] couldn’t trust anyone.” She “started cutting [herself] at the age of 12.” She felt “uncomfortable when any man touches [her] including [her] current boyfriend.” She felt there was something wrong with her until she started therapy. C.H. said she “feared being ‘put under’ for surgery with a male doctor because [Wilcox] previously sucked her breasts.”

The trial court considered the probation department’s recommendation. It exercised its discretion to order lower restitution amounts. The court carefully considered the nature of these offenses and could reasonably infer the long term impact for Wilcox’s victims was substantial. The restitution amounts do not shock the conscience and they are not unreasonable.

DISPOSITION

The orders are affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

F. Dino Innumerable, Judge
Superior Court County of Ventura

Jolene Larimore, under appointment by the Court of
Appeal, for Defendant and Appellant.

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