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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GARY ALAN HAW,

Defendant and Appellant.

2d Crim. No. B282652
(Super. Ct. No. 2012043608)
(Ventura County)

Gary Alan Haw appeals from judgment after conviction by jury on five counts of lewd acts upon a child, Doe 1, between 2000 and 2002. (Pen. Code, § 288, subd. (c)(1).)[1] The trial court sentenced him to a total term of five years eight months in state prison. It awarded victim restitution in the total amount of $1.2 million in noneconomic damages, including prejudgment interest, to Doe 1 and his older brother, Doe 2.

We conclude the prosecution was timely commenced under section 803, subdivision (f), which allowed the prosecution to file

[1] All statutory references are to the Penal Code.

a "complaint" within one year of Doe 1's report to law enforcement, even though the case eventually proceeded by indictment. We also conclude the trial court's restitution award to Doe 1 and Doe 2 for noneconomic damages was authorized. The award of prejudgment interest was unauthorized because their noneconomic loss was not ascertainable on the date of a specific loss. We modify the award of restitution and affirm the judgment as modified.

BACKGROUND AND PROCEDURAL HISTORY

The Evidence

The trial testimony of many young men, including Doe 2, established that Haw has a pattern of befriending vulnerable 14- to 15-year-old boys and their mothers, paying the boys cash to work at the tanning salons he owns, allowing the boys to drive his luxury cars, granting them other favors, and sexually abusing them. Only offenses against Doe 1 were charged. The details are not material to the issues on appeal, aside from some key dates.

Haw had a romantic relationship with the mother of Doe 1 and Doe 2. She was divorced and had custody of her sons. In 2000, they moved into Haw's home (the first house), while Haw was constructing a larger home (the second house). Doe 1 was 14 years old. Haw was a registered sex offender.

The boys worked for Haw in his tanning salons. By the end of 2000, they all moved into the second house. In 2002, the boys and their mother moved out.

Doe 1 testified that between 2000 and 2002, Haw orally copulated him five specific times. Doe 1 did not provide dates, but his testimony established that the first three incidents occurred in 2000 and the latter two occurred sometime before January 22, 2002. He said the first incident occurred at the first

house just after they moved in; the second was at the new home site during construction in 2000; the third was in the shower of the first house also in 2000. The other two incidents occurred at tanning salons. All the abuse ended when he, his mother and brother moved out of the second house in 2002.

The prosecutor asked Doe 1 how many other times Haw molested him. Doe 1 answered, "I'm not sure. If I had to give a range, maybe 50 to 75 or 100." Doe 1 did not testify about the timing of these other incidents. Doe 2 testified that Haw sexually abused him also. He described his guilt about not protecting his younger brother.

In June 2012, when Doe 1 was an adult, he reported Haw's abuse to law enforcement.

The Pleadings

In December 2012, within one year of the report to law enforcement, the People filed a criminal complaint, alleging five counts of section 288, subdivision (c)(1) between 2000 and 2002. Each version of the pleadings alleged five violations between "January 23, 2000 [and] January 22, 2002," when Doe 1 was "14 or 15 years old." The initial complaint described count 1 as kissing and oral copulation, and described the other counts more generally as lewd acts. Subsequent pleadings described all five counts as oral copulation. The wording varied slightly, but each version of the pleadings described count 1 occurring at the first house, count 2 at the second house while it was under construction, count 3 in the shower of the first house, and counts 4 and 5 occurring at tanning salons.

In July 2013, the People amended the complaint.[2] The amendment added specific facts to establish that the prosecution was timely commenced under section 803, subdivision (f), because it was commenced within one year of Doe 1's report and involved substantial sexual conduct corroborated by independent witnesses as that extension statute requires. The preliminary hearing was set for August 9.

About 10 days before the preliminary hearing, on July 26, 2013, a grand jury returned an indictment against Haw alleging the same conduct. It was identical to the amended complaint.[3] The indictment was presented and filed in the same case, under the same case number. The preliminary hearing did not go forward, and from this point forward the case proceeded on the indictment. Haw waived arraignment on the indictment and pled not guilty. There is no indication in the briefs or the record that the complaint was dismissed. Haw describes the complaint as "abandoned."

Haw moved to dismiss or set aside the indictment as untimely. The trial court denied his motion. We summarily denied Haw's petition for a writ of mandate. (*Haw v. Superior Court* (Super. Ct. Ventura County, 2016, No. B269908).) The California Supreme Court denied his petition for review on April 20, 2016 (No. S232913).

Just before trial, Haw again moved to dismiss the prosecution as untimely. This time he argued that section 803,

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[2] The amended complaint added three counts naming other victims, but these counts were later dismissed.

[3] The only substantive difference was that the last tanning salon incident was alleged to have occurred in Ventura County rather than Los Angeles County.

subdivision (f) does not apply to prosecutions by indictment. The trial court denied the motion.

The prosecutor relied on section 803, subdivision (f) as the applicable statute of limitations at trial. The trial court instructed the jury that the crimes charged "occurred between January 23, 2000, and January 22, 2002"; and that "[t]he People are not required to prove that the crime took place exactly on a particular day in that date range but that they did occur within that date range."

The jury convicted Haw on all counts. The verdicts do not identify dates. Haw moved for arrest of judgment based on the statute of limitations; the trial court denied the motion.

The Restitution Award

The trial court awarded $1,202,336 in victim restitution, consisting of $400,000 to Doe 1; $75,000 to Doe 2; plus prejudgment interest to each at 10 percent per annum from January 22, 2002. The court allowed Haw an offset for a civil settlement with Doe 1.

The award was solely for noneconomic loss. The trial court acknowledged it had "not been presented with evidence of economic damages." Doe 2's award was not based on the uncharged offenses committed against him, but on the psychological impact he experienced because of the abuse to his brother. Doe 2 suffered guilt because he left Doe 1 behind with Haw when he went to college and did not disclose the abuse when he had the opportunity to do so in a child custody hearing. The brothers testified that they gave false testimony to their father in that hearing after Haw coached them to do so. They wanted to protect their mother who was getting a college education at Haw's expense.

DISCUSSION

Statute of Limitations

Haw contends the prosecution was untimely. We reject the prosecution's argument that this claim is foreclosed because we denied his writ petition. Summary denial of a writ petition is not the law of the case. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 894-895, 899; *Trope v. Katz* (1995) 11 Cal.4th 274, 287, fn. 1.)

The prosecution has the burden of proving by a preponderance of the evidence that a criminal action has commenced within the applicable statutory period. (*People v. Zamora* (1976) 18 Cal.3d 538, 565, fn. 27.) The prosecution was timely commenced under section 803, subdivision (f).

When Haw committed the charged offenses (between 2000 and 2002), the statute of limitations for violations of section 288, subdivision (c) was three years. (§ 801.) Before that three-year period expired, the Legislature passed section 803, subdivision (f), an extension statute that applies only to corroborated reports of substantial sex offenses against minors. It allows such prosecutions to be commenced within one year of an adult's report to law enforcement.

Section 803, subdivision (f) was originally enacted in 1993 as section 803, subdivision (g). (Stats. 1993, ch. 390, § 1.) It has undergone various revisions to withstand constitutional attack. In its current, constitutional form, it provides:

"(f)(1) [A] criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under 18 years of age, was the victim of a crime described in Section . . . 288 . . .

"(2) This subdivision applies only if all of the following occur:

"(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

"(B) The crime involved substantial sexual conduct [as defined in section 1203.066, subdivision (b), including oral copulation] . . . .

"(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

"(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals." (§ 803, subd. (f)(1)-(3).)

The prosecution met each requirement of section 803, subdivision (f). The initial complaint was filed in December 2012, within one year of Doe 1's June 2012 report to law enforcement. Each count involved substantial sexual conduct: oral copulation. Many other victims provided clear and convincing testimony corroborating Doe 1's report. The limitations period specified in sections 800, 801, and 801.1 had expired.[4]

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[4] The People concede that "prosecution was time-barred" under sections 800, 801, and 801.1 as to violations between January 23, 2000, and December 31, 2001. For the first time on appeal, the People argue the prosecution was timely commenced under sections 801 and 801.1 because five incidents of lewd acts may have occurred in 2002, and the three-year limitations period of section 801 was extended in 2005 to 10 years by section 801.1. But the prosecution did not prove that the conduct occurred in 2002. It alleged and proved conduct between 2000 and 2002. The only specific time frame proven was for the incidents in 2000.

Haw contends the prosecution was nevertheless untimely because (1) it eventually proceeded by indictment, rather than by "complaint"; and (2) the initial complaint did not specifically allege oral copulation (or other substantial sexual conduct) in four of the five counts.

Statutes of limitation must be strictly construed in favor of the accused. (*People v. Zamora*, *supra*, 18 Cal.3d 538, 574.) Our primary objective is to ascertain and effectuate legislative intent. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007.) We first examine the language of the statute. (*Ibid*.) If it is clear, the Legislature is presumed to have meant what it said, and the plain meaning of the language governs. (*Kizer v. Hanna* (1989) 48 Cal.3d 1, 8.)

The plain language of section 803 unambiguously allowed the People to file a criminal complaint within one year of Doe 1's report. That is what happened here. (§ 803, subd. (f)(1) ["a criminal complaint may be filed within one year"].) The question is whether, once the action was timely commenced by complaint, it could only be tried on that complaint and not by subsequent indictment.

Nothing in the text or legislative history suggests that the Legislature intended to restrict the prosecution to continue only by complaint, particularly where the indictment replaced a complaint in one continuous prosecution for the same conduct by the same person under the same case number.

Haw relies on the plain language of the statute - "complaint" - to argue the defendant must have a preliminary hearing and be tried on the complaint. But the statute says

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And the judge instructed the jury that they need not decide when within 2000-2002 the conduct occurred.

nothing about a preliminary hearing; it simply authorizes commencement by "fil[ing]" the complaint. (§ 803, subd. (f)(1).)

The Legislature selected the word "complaint" to render more prosecutions timely commenced. (§ 804; *People v. Yovanov* (1999) 69 Cal.App.4th 392, 402.) Ordinarily, the filing of a complaint does not stop the time running for purposes of the statute of limitations. (*Yovanov*, at p. 401.) Rather, the prosecution ordinarily "commences" when any of the following occurs: (a) an information or indictment is filed; (b) a misdemeanor complaint is filed; (c) the defendant is arraigned on a felony complaint; or (d) an arrest warrant or bench warrant is issued. (§ 804.) But for cases that fall within section 803, subdivision (f), the clock stops running upon an earlier date, the filing of the felony "complaint." (*Yovanov*, at p. 402.) "Section 803 [subdivision (f)] is clear insofar as it expressly designates the filing of the criminal complaint as the relevant event for determining when the prosecution has commenced for purposes of that section. The statute also makes clear it is an exception to the general time limitations applicable to criminal actions." (*Ibid.*)

Thus, in *Yovanov*, a prosecution for violations of section 288, subdivision (a) was timely commenced because the complaint was filed within one year of the victims' reports, although the information was filed more than one year after the report. (*People v. Yovanov*, *supra*, 69 Cal.App.4th 392, 402.) Here too the complaint was filed within one year of Doe 1's report and the prosecution was timely commenced. The clock stopped when the complaint was filed.

Haw also offers a policy argument. He contends the Legislature used the word "complaint" to ensure that there would

be a preliminary hearing to test the corroborating evidence the extension statute requires. He offers no evidence of this intent. He does not explain why a grand jury does not adequately test such evidence.

Our review of the legislative history discloses no evidence that the Legislature used the word "complaint" to ensure there would be a preliminary hearing. The Legislature used the same wording in a similar limitations statute that does not even require corroborating evidence. (Stats. 1990, ch. 587, § 2.) Section 803, subdivision (g) was enacted in 1990,[5] before the subdivision we now interpret. It extended the limitations period for child sex abuse that is reported by a child. Like the subdivision we consider now, it provided that "a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency." There was no requirement that the

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[5] Former section 803, subdivision (f), later designated section 803, subdivision (g), read:
"Notwithstanding any other limitation of time described in this section, *a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child* under 17 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, or 289.
"For purposes of this subdivision, a 'responsible adult' or 'agency' means a person or agency required to report pursuant to Section 11166. This subdivision shall only apply if:
"(1) The limitation period specified in Section 800 or 801 has expired, and
"(2) The defendant has committed at least one violation of Section 261, 286, 288, 288a, or 289, against the same victim within the limitation period specified for that crime in either Section 800 or 801." (Stats. 1990, ch. 587, § 2, italics added.)

report be corroborated by evidence that might be tested in a preliminary hearing.

Haw points to statutory revisions in 1997 and 2005 that inserted, and then deleted, the phrase "complaint or indictment." (Former § 803, subd. (g), amended by Stats. 1996, ch. 130, § 1, ch. 1023, § 389.1, eff. Sept. 29, 1996; Stats. 1997, ch. 29, § 1, eff. June 30, 1997; former § 803, subd. (f), amended by Stats. 2005, ch. 2, § 3, eff. Feb. 28, 2005; amended by Stats. 2005, ch. 479, § 3.) He argues this demonstrates a deliberate legislative choice in 2005 to exclude prosecutions by indictment. The legislative history does not support his theory.

The phrase "complaint or indictment" was added to the 1997 version for the purpose of reviving stale prosecutions, not to restrict the prosecutor's choice of pleadings. The "complaint may be filed" language we now interpret was left in place. It provided that "a criminal complaint may be filed within one year" (former § 803, subd. (g)(1), Stats. 1997, ch. 29, § 1), "and it shall revive any cause of action . . . if . . . [¶] [t]he complaint or indictment was filed on or before January 1, 1997 . . . ." (*Id.*, subd. (g)(3)(i), Stats. 1997, ch. 29, § 1.) If anything, the 1997 version reinforces our conclusion that the Legislature believed the action could proceed by complaint or by indictment.

The 1997 addition was deleted in 2005 for a purpose unrelated to preliminary hearings. (§ 803, subd. (f), added by Stats. 2005, ch. 2, § 3; amended by Stats. 2005, ch. 479, § 3.) It was deleted because the United States Supreme Court decided that revival statutes violate the Constitution's ex post facto clauses. (*Stogner v. California* (2003) 539 U.S. 607, 610 [156 L.Ed.2d 544, 551]; Assem. Com. on Public Safety, Analysis of Sen. Bill No. 16 (2005-2006 Reg. Sess.) Feb. 2, 2005, p. 3.)

Haw contends that even if the complaint was timely commenced, the indictment was not because it commenced a different prosecution. It is true that "multiple prosecutions for the same acts are distinct" for purposes of limitations. (*People v. Le* (2000) 82 Cal.App.4th 1352, 1358.) But the record does not reflect that there was a different prosecution here. The complaint was never dismissed. An indictment was filed in the same pending action under the same case number, without interruption in the proceedings.

Nothing in *People v. Le*, *supra*, 82 Cal.App.4th 1352 or *People v. Hamlin* (2009) 170 Cal.App.4th 1412 suggests otherwise. Neither case involved a section 288 prosecution or interpretation of section 803, subdivision (f). *Le* is procedurally dissimilar because the complaint was dismissed and time elapsed before a new case commenced by indictment. *Hamlin* supports our conclusion.

In *Le*, the initial prosecution for insurance fraud against two doctors was timely commenced when arrest warrants were issued on a municipal court complaint. (§ 803 subd. (d).) That complaint was dismissed before the preliminary hearing. (*People v. Le*, *supra*, 82 Cal.App.4th 1352, 1356.) A year later, after the statutory period had expired, a grand jury returned an indictment against the same people for the same conduct and it was filed in superior court under a new case number. (*Ibid.*) The indictment was untimely. The court reasoned, "[T]he issuance of the arrest warrants in case No. DVW 239475APOF commenced that prosecution, but it did not commence *this* case, No. 93ZF0165, which arose from an indictment." (*Id.* at p. 1359.)[6]

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[6] Although the statute of limitations is tolled during a prosecution of the same person for the same conduct (§ 803, subd.

Here, the initial complaint was not dismissed, the prosecution was continuous, and the indictment against Haw was returned in the same case.

In *Hamlin*, the initial prosecution for (non-sexual) child abuse was timely commenced by complaint and information. (*People v. Hamlin*, *supra*, 170 Cal.App.4th 1412, 1434-1435.) But shortly before trial, a grand jury returned an indictment alleging the same conduct. That indictment was filed under another case number and tried. (*Id.* at pp. 1436, 1441-1442.) Before trial, the defendant moved to dismiss the first case on the ground that " 'an information and indictment cannot logically exist at the same time.' " (*Id.* at p. 1436.) The trial court denied that motion and ruled that the indictment "superseded" the information. (*Id.* at p. 1440.) The Court of Appeal concluded the second prosecution was timely commenced, because the first case tolled the statute of limitations. (§ 803, subd. (b); *Hamlin*, at p. 1442.) The result is the same here, but no tolling is necessary because there was one continuous prosecution under the same case number.

Haw contends the initial complaint did not allege substantial sexual conduct necessary to bring the charges within section 803, subdivision (f). He points out that of the five counts of lewd conduct, only one specified that the conduct was oral copulation. But the prosecution was not required to allege specific facts to bring the case within the provisions of section 803, subdivision (f). A defendant is entitled to notice of the charges. But that does not necessarily require that specific acts

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(b)), the prosecution in *Le* could not rely on tolling because it did not prove how much time elapsed before the initial complaint was dismissed. (*People v. Le*, *supra*, 82 Cal.App.4th 1352, 1357, 1361.)

of substantial sexual conduct be alleged. It is the evidence of substantial sexual conduct that must be proved at trial. (See *People v. Smith* (2011) 198 Cal.App.4th 415, 424-428.)

Haw contends the complaint and indictment did not allege the same conduct, and points out that a complaint cannot be amended to charge a new offense after the limitations period has run for that offense. (§ 1009; *Harris v. Superior Court* (1988) 201 Cal.App.3d 624, 627-628.) But the record as a whole demonstrates that each pleading described the same five incidents of lewd conduct that Doe 1 described in his testimony and each involved substantial sexual conduct: oral copulation. Subsequent pleadings added allegations tracking the requirements of section 803, subdivision (f), but did not change the offenses charged or the conduct alleged. (*People v. Crosby* (1962) 58 Cal.2d 713, 723-724.) The new descriptions of some counts as "oral copulation" more specifically described the lewd conduct that was alleged in the original complaint. They did not allege new conduct.

Restitution

Haw contends the restitution award was unauthorized because family members may only recover economic losses; direct victims may not recover noneconomic losses if they do not incur economic losses; and prejudgment interest may not be awarded for noneconomic damages. We only agree with the last contention. The restitution statute expressly authorizes noneconomic damages to both the direct victim and his family for felony violations of section 288.

We review restitution orders for abuse of discretion. (*People v. Knoller* (2007) 41 Cal.4th 139, 156.) A court that applies the wrong legal standard abuses its discretion. (*Ibid.*)

We interpret statutes de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.)

The California Constitution provides that all people who "suffer losses" as a result of crime are entitled to direct restitution. (Cal. Const., art. I, § 28, subd. (b)(13)(A)-(C).) Section 1202.4 authorizes victim restitution for "economic loss." But for felony violations of section 288, it defines "economic loss" to include "noneconomic losses." Specifically, section 1202.4, subdivision (f)(3) provides: "To the extent possible, the restitution order . . . shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined *economic loss* incurred as the result of the defendant's criminal conduct, *including*, but not limited to, all of the following: [¶] . . . (F) *Noneconomic losses*, including, but not limited to, psychological harm, for felony violations of Section 288, 288.5, or 288.7." (Italics added.)

The language in section 1202.4, subdivision (f)(3) applies to any "victim" of a violation of section 288. "[V]ictim[s]" include family members who suffer as a result of the violation. (§ 1202.4, subd. (k)(3)(A).) For purposes of section 1202.4, a "victim"[7]

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[7] Section 1202.4, subdivision (k) reads:
"For purposes of this section, "victim" shall include all of the following:
"(1) The immediate surviving family of the actual victim.
"(2) A corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.
"(3) A person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

includes the "immediate surviving family of the actual victim" (*id.*, subd. (k)(1)), and "[a] person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions: [¶] (A) At the time of the crime was [a] sibling . . . of the victim" (*id.*, subd. (k)(3)(A)).

Doe 1 is a victim of sexual abuse. His brother Doe 2 suffered psychological harm as a result of the crime. Both are entitled to be fully reimbursed for the psychological harm they suffered when Haw abused Doe 1. (*People v. O'Neal* (2004) 122 Cal.App.4th 817, 820-821 [brother of child molested by defendant

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"(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.
"(B) At the time of the crime was living in the household of the victim.
"(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).
"(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.
"(E) Is the primary caretaker of a minor victim.
"(4) A person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.
"(5) A governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section 594, and that has sustained an economic loss as the result of a violation of Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7."

suffered emotionally and was thus himself a victim under section 1202.4, subdivision (k)].)

Haw argues that a direct victim must suffer economic loss to recover noneconomic loss, but cites no authority that so holds. In *People v. Smith*, *supra*, 198 Cal.App.4th 415, 432, and other cases cited by the parties, the issue was not presented because the victims suffered both losses.

Haw argues that Doe 2 is not a sibling who "suffered economic losses." But section 1202.4 expressly defines "economic losses" to include "noneconomic losses" for felony violations of section 288.

We conclude the award of prejudgment interest was not authorized, however, because the noneconomic losses were not readily ascertainable on a specific date of loss. Section 1202.4 authorizes the trial court to award interest on restitution from the date of sentencing or the date of the loss "as determined by the court." (*Id.*, subd. (f)(3)(G).) But the statute contemplates mainly economic losses that are readily ascertainable, awarding noneconomic losses only to victims of felony violations of sections 288, 288.5 and 288.7. (§ 1202.4, subd. (f)(3)(F).) And noneconomic damages are inherently nonliquidated, not readily subject to precise calculation, and necessarily left to the subjective discretion of trial courts. (See *Greater Westchester Homeowners Assn. v. City of Los Angeles* (1979) 26 Cal.3d 86, 103.) This is particularly true where, as here, the psychological harm continued over an undefined period of time and was based at least in part on their continuing "anguish" and "struggle" as they testified 10 years later. We thus modify the award to eliminate prejudgment interest.

Finally, we reject Haw's contention that he was entitled to a jury determination of restitution for the reasons stated in *People v. Smith*, *supra*, 198 Cal.App.4th 415, 433-434. Direct restitution compensates a victim; it is not punishment for a crime and *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] does not apply. (*People v. Wasbotten* (2014) 225 Cal.App.4th 306, 308-309.)

DISPOSITION

The restitution order is modified to eliminate the award of prejudgment interest in the amount of $612,494 to Doe 1 and $113,842 to Doe 2. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

David R. Worley, Judge

Superior Court County of Ventura

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