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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE V. CRUZ,

Defendant and Appellant.

B281291

(Los Angeles County
Super. Ct. No. VA127109)

APPEAL from an order of the Superior Court of Los Angeles County, Josh Fredricks, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Rachel Varnell, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Joe Vincent Cruz appeals from an order denying his motion to vacate a \$280 restitution fine and a \$20,403.01 victim restitution order. (Pen. Code,¹ § 1202.4.) We affirm the trial court’s denial order.

BACKGROUND

Defendant pled no contest to vehicular manslaughter. (§ 192, subd. (c)(1).) Jena Noelle Cascarini was killed in the collision. Melissa Ann Martinez was seriously injured. Defendant admitted prior strike and serious felony convictions. (§§ 667, subds. (a)(1), (b)-(i), 1170.12, subds. (a)-(d).) Pursuant to his “Felony Advisement of Rights, Waiver, and Plea Form,” defendant acknowledged the trial court could, among other things, order him to pay a restitution fine and victim restitution. The trial court sentenced defendant to 17 years in state prison. At sentencing, the court also imposed a \$280 restitution fine (§ 1202.4) among other orders. Defendant waived his appearance at the victim restitution hearing to be held at a later date. He was, however, represented by counsel at that hearing.

The Victim Compensation and Government Claims Board filed a request for \$20,403.01 in restitution. The board presented documents reflecting over \$3,000 in funeral expenses and over \$17,000 in medical expenses. At the February 21, 2014 victim restitution hearing, the parties stipulated to \$20,403.01 in restitution and the trial court so ordered. (§ 1202.4, subds. (a)(3)(B), (f).)

¹ Further statutory references are to the Penal Code.

Three years later, on February 3, 2017, defendant filed a motion to vacate the \$280 restitution fine and the \$20,403.01 victim restitution order. Defendant argued he had no opportunity to object to or factually contest the fine or the order. He claimed his counsel was ineffective. Defendant presented an “Inmate Statement Report” reflecting he had satisfied the \$280 restitution fine.

On February 7, 2017, the trial court denied the motion. The trial court ruled: “This Court has read and considered defendant Cruz’[s] motion to vacate the Restitution order for \$20,403.01, filed on February 3, 2017. The motion is denied. Defendant was convicted of the Vehicular Manslaughter of . . . Cascarini. Defendant entered a waiver . . . agreeing to pay restitution to the victim of any dismissed counts. Defendant also waived his appearance for the restitution hearing. Evidence of the damages was provided to the court: over \$17,000 in medical bills to victim . . . Martinez; over \$3000 in funeral expenses incurred by the family of the deceased. All of these expenses were paid by the Victim’s Compensation Board. There is no basis for vacating the Restitution Order. Motion is denied.”

Defendant’s appointed counsel filed an opening brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436 requesting this court to independently review the record to determine if there are any arguable issues. On August 22, 2017, we gave notice to defendant that appointed appellate counsel had failed to find any arguable issues and defendant had 30 days within which to submit by brief or letter any grounds of appeal, contentions, or arguments he wished this court to consider. On September 20, 2017, we extended defendant’s time to reply to October 24, 2017.

On November 8, 2017, defendant filed a letter brief with permission.

DISCUSSION

In his letter brief, defendant argues the reasoning of *People v. Oganessian* (1999) 70 Cal.App.4th 1178 extends to his case. We disagree. In *Oganessian*, the defendant was sentenced to life without the possibility of parole on one of two counts. *Oganessian* held a parole revocation restitution fine (§ 1202.45) may not be imposed on a defendant whose sentence does not allow for parole. (*People v. Oganessian, supra*, 70 Cal.App.4th at pp. 1182, 1185.) Defendant has not been sentenced to life without the possibility of parole. His 17-year sentence allows for parole. Further, defendant's motion to vacate the restitution order did not challenge the imposition of a section 1202.45 parole revocation restitution fine.

Defendant also asks that we appoint a new attorney to represent him in this appeal. We decline to do so. Defendant's rights are adequately protected by the *Wende* procedure followed in this case. Defendant's appointed appellate counsel has not withdrawn. Moreover, this court has independently reviewed the record. Had we found any arguable issues, we would have directed defendant's appointed appellate counsel to brief them.

We have reviewed the record and are satisfied that defendant's counsel has fully complied with her responsibilities and no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.) Accordingly, we affirm the order denying the motion to vacate the restitution fine and victim restitution award.

DISPOSITION

The trial court's February 7, 2017 order is affirmed.
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RAPHAEL, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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