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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.

MARSHAWN SLATER,

Defendant and Appellant.

B290117

(Los Angeles County  
Super. Ct. No. MA071900)

APPEAL from a judgment of the Superior Court of  
Los Angeles County. Kerry L. White, Judge. Affirmed.

Linda L. Gordon, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Assistant  
Attorney General, Steven D. Matthews and Ryan M. Smith,  
Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

In an information filed September 11, 2017, the Los Angeles County District Attorney's Office charged defendant and appellant Marshawn Slater with resisting an executive officer (Pen. Code, § 69; count 1)<sup>1</sup> and two counts of criminal threats (§ 422; counts 2 & 3). It was further alleged that defendant suffered one prior serious felony conviction (§ 667, subd. (a)(1)), one prior serious or violent felony conviction pursuant to the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and three prior prison terms (§ 667, subd. (b)).

Following trial, a jury convicted defendant of count one and acquitted him of the two criminal threats counts.

Defendant was sentenced to three years in county jail.<sup>2</sup> The trial court also imposed a \$900 restitution fine, a \$30 criminal conviction assessment, and an \$40 court operations fine.

Defendant timely appealed.<sup>3</sup> His sole argument on appeal is that, pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1163–1173 (*Dueñas*), the trial court erred in imposing the criminal conviction assessment (Gov. Code, § 70373), the court operations assessment (§ 1465.8), and the restitution fine (§ 1202.4) without first determining that defendant is able to pay those fines, in violation of defendant's right to due process. In addition, defendant asks that we "stay the restitution fine unless

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The parties briefs erroneously provide that defendant was sentenced to prison.

<sup>3</sup> While this appeal was pending, defendant filed a motion to vacate certain fines with the trial court. On July 17, 2019, the trial court denied his motion.

and until the People can show that he has the present ability to pay.”

We affirm the trial court’s judgment and deny defendant’s request to stay the restitution fine.

### DISCUSSION

As defendant concedes in his opening brief, he did not object to the assessments or fines in the trial court. Thus, he has forfeited his claim on appeal.

Even before *Dueñas*, a trial court could “consider[]” a defendant’s “[i]nability to pay” whenever it “increase[ed] the amount of the restitution fine” in excess of the minimum of \$300 applicable here. (§ 1202.4, subds. (b)(1), (c).) Defendant did not object or otherwise present any evidence regarding his ability to pay to the trial court at sentencing. As a result, the issue has been forfeited on appeal. (See, e.g., *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468–1469; *People v. Bipialaka* (2019) 34 Cal.App.5th 455, 464 [by failing to object to fees or fines in the trial court, the defendant forfeited his objection on appeal]; *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153–1155.)

Moreover, we reject defendant’s contention that his objection would have been futile. “Although [the] statutory provisions mandate the assessments be imposed, nothing in the record of the sentencing hearing indicates that [defendant] was foreclosed from making the same request that the defendant in *Dueñas* made in the face of those same mandatory assessments. [Defendant] plainly could have made a record had his ability to pay actually been an issue. Indeed, [defendant] was obligated to create a record showing his inability to pay the maximum restitution fine, which would have served to also address his ability to pay the assessments.” (*People v. Frandsen, supra*, 33 Cal.App.5th at p. 1154.)

“More fundamentally, we disagree with [defendant’s] description of *Dueñas* as ‘a dramatic and unforeseen change in the law . . . .’ [Citation.]” (*People v. Frandsen, supra*, 33 Cal.App.5th at p. 1154.) “*Dueñas* was foreseeable.” (*Id.* at p. 1154.)

Setting aside this procedural obstacle, defendant’s argument fails on the merits. Based on the constitutional guarantees of due process and ban against excessive fines, *Dueñas* held that trial courts may not impose three of the standard criminal assessments and fines—namely, the \$30 court operations assessment (§ 1465.8), the \$40 criminal conviction assessment (Gov. Code, § 70373), and the \$900 restitution fine (§ 1202.4)—without first ascertaining the “defendant’s present ability to pay.” (*Dueñas, supra*, 30 Cal.App.5th at pp. 1164, 1171, fn. 8.) We need not decide whether we agree with *Dueñas* because defendant is not entitled to a remand even if we accept *Dueñas*. That is because the record in this case, unlike the record in *Dueñas*, indicates that defendant has the ability to pay the assessments and fines imposed in this case. According to his reply brief, defendant may have had the opportunity to work during his incarceration. Even if he did not, he has since been released from jail, and defendant directs us to no evidence that he cannot obtain work in order to pay the fines assessed. (*People v. Gamache* (2010) 48 Cal.4th 347, 409 [defendant “points to no evidence in the record supporting his [present or future] inability to pay”].) While defendant may have been unemployed at the time of his arrest on August 8, 2017, there is no indication that he will remain unemployed. And defendant offers no evidence or argument in support of his suggestion that his sight impairment will impede his ability to gain any sort of employment.

It follows that we reject defendant's argument that the restitution fine must be stayed unless and until the People prove he has a present ability to pay.<sup>4</sup>

**DISPOSITION**

The judgment is affirmed.

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\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.  
HOFFSTADT

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<sup>4</sup> In so concluding, we note that defendant offers no legal authority in support of his suggestion that because he was represented by appointed counsel at trial, he necessarily cannot afford to pay the court-ordered fines. In fact, the law holds otherwise. (See, e.g., *People v. Douglas* (1995) 39 Cal.App.4th 1385, 1397 ["a defendant may lack the 'ability to pay' the costs of court-appointed counsel yet have the 'ability to pay' a restitution fine"].)