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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCUS WAYNE LONG,

Defendant and Appellant.

B279961

(Los Angeles County
Super. Ct. No. TA037932)

APPEAL from an order of the Superior Court of Los Angeles County, John J. Lonergan, Jr., Judge. Affirmed.

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

On October 28, 1999, following his conviction for murder (Pen. Code, § 187, subd. (a)),¹ appellant was sentenced to 28 years to life in state prison. The court imposed a \$5,000 restitution fine pursuant to section 1202.4, subdivision (b), and a \$5,000 parole revocation restitution fine. The latter was stayed pending successful completion of parole.

On November 27, 2016, appellant filed a motion for relief from all restitution fines, and requested reimbursement of restitution already paid. The motion was made pursuant to a federal law (18 U.S.C. § 3664(a)), and appellant cited federal cases holding that when restitution is ordered, the record must reflect some evidence that the defendant would be able to pay the amount ordered. In a supporting affidavit, appellant stated that at the time of sentencing, he was unable to pay restitution. He noted that he had lived with his mother and was “completely dependent upon her support.” He further noted that he had been diagnosed with a learning deficit and compression disorder. Appellant asserted that he would not be able to pay restitution in the future, and the restitution ordered would interfere with his ability to fully rehabilitate.

On October 27, 2016, the trial court denied the motion for relief and waiver of both \$5,000 restitution fines. Appellant timely appealed.

After examining the record, appointed appellate counsel filed a brief raising no issues, but asking this court to independently review the record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. (See *Smith v. Robbins*

¹ All further statutory citations are to the Penal Code, unless otherwise stated.

(2000) 528 U.S. 259, 264.) On May 4, 2017, we advised appellant he had 30 days within which to submit by brief or letter any contentions or argument he wished this court to consider. No response was received.

Appellant has not demonstrated his entitlement to relief from the restitution fines. This matter is not governed by federal law, but by analogous state law. Under California law, at the time appellant was sentenced in 1999, the sentencing court was required to consider his ability to pay when it imposed the \$5,000 restitution fine. (*People v. Avila* (2009) 46 Cal.4th 680, 729, citing former § 1202.4, subd. (d).) However, “a defendant bears the burden of demonstrating his inability to pay, and express findings by the court as to the factors bearing on the amount of the fine are not required.” (*Ibid.*; former § 1202.4, subd. (d).) Here, appellant has not demonstrated that at the time of his sentencing, he provided evidence to the court of his inability to pay. Thus, he has not shown error in the imposition of the restitution fine.

As to the \$5,000 parole revocation restitution fine, under section 1202.45, the sentencing court was required to impose the fine in the same amount as the restitution fine. Although section 1202.45 does not expressly mandate consideration of a defendant’s inability to pay, because the parole revocation fine is based on the restitution fine, appellant may challenge that fine on the same ground he challenged the restitution fine. As we have concluded that appellant failed to demonstrate error with respect to the \$5,000 restitution fine, we reach the same conclusion with respect to his challenge to the parole revocation restitution fine. In short, appellant has not shown the trial court erred in denying his motion for relief from the restitution fines

ordered.

This court has examined the entire record in accordance with *People v. Wende, supra*, 25 Cal.3d at pages 441-442, and is satisfied appellant's attorney has fully complied with the responsibilities of counsel, and no arguable issues exist. Accordingly, we affirm.

DISPOSITION

The order denying appellant's motion for relief from restitution fines is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.