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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.

RICKY MACK ALEXANDER,

Defendant and Appellant.

B293886; B297850

(Los Angeles County  
Super. Ct. No. TA134545)

APPEAL from an order of the Superior Court of Los Angeles County, Kelvin D. Filer, Judge. Affirmed.

Stephanie L. Gunther, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Senior Assistant Attorney General, David E. Madeo and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ricky Mack Alexander (defendant) was convicted of a domestic violence crime in 2015 and ordered to pay a \$30 court facilities assessment, a \$40 court operations assessment, and a \$2,000 restitution fine. Defendant later filed a motion asking the trial court to reduce the \$2,000 restitution fine to \$200 because he lacked the ability to pay the higher amount. And after that, defendant's appellate attorney apparently sent the court a letter asking the court to strike the \$2,000 restitution fine and the court assessments. The trial court reduced the fine to \$200, an amount it found could "be collected from [defendant's] prison earnings," but did not reduce the assessments because they are "minimal amounts, and [defendant] should be able to pay those from his prison earnings." We proceed to consider whether defendant is entitled to reversal because he has no ability to pay the \$270 in financial obligations, i.e., the reduced restitution fine and court assessments.

In 2015, defendant was convicted of injuring a cohabitant or girlfriend after a prior conviction in violation of Penal Code section 273.5, subdivision (f)(1). He was sentenced to serve ten years in prison and to pay a \$2,000 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$40 court security assessment (Pen. Code, § 1465.8, subd. (a)(1)), and a \$30 court facilities assessment (Gov. Code, § 70373).

Years later, in March 2019, defendant filed a motion for modification of sentence (under Penal Code section 1202.4) that asserted the trial court "improperly imposed a \$2,000 restitution fine based upon the apparent erroneous assumption that he could pay that fine out of his future wages while incarcerated." Defendant's motion asserted his "only likely source of income apparent on the record from which [he] could pay any fine would

be his possible wages from miscellaneous assignments and labor in the future while incarcerated at the State Prison.” He argued “the appropriate remedy” was to reduce the amount of the restitution fine to \$200.<sup>1</sup> Defendant’s motion did not challenge the \$70 in court operations and security assessments ordered at his sentencing hearing.

Before the court heard defendant’s motion, defendant’s appellate attorney apparently sent the court a letter that requested relief somewhat inconsistent with defendant’s own motion. From what we glean from the record on appeal, which does not include the letter itself, appellate counsel asked the court to strike the entire \$2,000 fine, plus the \$70 in court assessments, pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*) and Penal Code section 1237.2.<sup>2</sup>

The trial court granted defendant’s sentence modification motion in open court, without counsel or defendant present, and reduced the restitution fine to \$200. Insofar as the letter from appellate counsel requested different or further relief, the court denied the request. The court explained its ruling on the record:

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<sup>1</sup> This motion was filed after an earlier post-sentencing motion from defendant claiming he was disabled and asking for a “lighter sentence,” a motion the trial court denied.

<sup>2</sup> The statute provides, in relevant part: “An appeal may not be taken by the defendant from a judgment of conviction on the ground of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be made informally in writing.”

“The request that I reduce the amount of the restitution—mandatory restitution fines and fees to the minimum amount of \$200 will be granted. So the mandatory restitution fine will be reduced to \$200 from \$2,000 and that \$200 can be collected from [defendant’s] prison earnings. [¶] And the amount of \$40 for the court security fee and \$30 for the operations fee, those also will remain. They’re minimal amounts, and [defendant] should be able to pay those from his prison earnings. So the only change would be to reduce the amount of the mandatory victim restitution fine from \$2,000 to \$200. All other orders remain in effect.”

Now on appeal, defendant asserts through his appellate attorney that the \$70 in assessments and the \$200 restitution fine he asked the trial court to impose must both be stricken under *Dueñas, supra*, 30 Cal.App.5th 1157 because he lacks the ability to pay the financial obligations. Even assuming *Dueñas* was correctly decided (but see *People v. Kopp* (2019) 38 Cal.App.5th 47, review granted Nov. 13, 2019, S257844; *People v. Aviles* (2019) 39 Cal.App.5th 1055, 1067-1068), reversal is not warranted. Defendant’s own motion conceded he could pay a \$200 fine from anticipated prison wages (which is why he asked that the fine be reduced to that amount from \$2,000), and we are confident the \$70 in additional financial obligations did not materially affect his ability to pay.

DISPOSITION

The trial court's order is affirmed.

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BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.