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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK EDWARD PANZARELLO,

Defendant and Appellant.

B237623

(Los Angeles County
Super. Ct. Nos. PA066387; PA064829)

APPEAL from a judgment of the Los Angeles County Superior Court.

Cynthia L. Ulfig, Judge. Affirmed as modified.

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

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson and
Kimberley J. Baker-Guillemet, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Patrick Edward Panzarello entered into a negotiated agreement in which he pleaded no contest to committing a lewd act on a child under the age of 14 years in violation of Penal Code section 288.¹ Appellant's sole contention on appeal is the trial court's order that he pay a \$1,200 restitution fine pursuant to section 1202.4 and a corresponding parole revocation fine must be reduced. We affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

A consolidated amended information charged appellant with committing one count of continuous sexual abuse of H.C., a child under the age of 14 years (count 1); three counts of committing a lewd act upon J.G., a child under the age of 14 years (counts 3, 4, 5);² two counts of committing a lewd act upon L.P., a child under the age of 14 years (counts 6, 7); and one count of continuous sexual abuse of K.C., a child under the age of 14 years (count 8). The information also alleged the statute of limitations was tolled pursuant to section 801.1 and multiple victims were involved within the meaning of section 667.61, subdivision (b).

The trial court granted appellant's motions to dismiss counts 3 through 8 on grounds of prejudice due to pre-accusation delay, as well as the special allegation of multiple victims as to count 1. The court then granted the People's motion to add, as count 9, a charge of committing a lewd act upon H.C., a child under the age of 14 years.

On September 16, 2011, appellant, who was represented by retained counsel, waived his right to trial and entered a plea of no contest to committing a lewd act upon H.C., a child under the age of 14 years, as charged in count 9.³ In advising appellant of his constitutional rights and the nature and consequences of his proposed plea, the trial

¹ Statutory references are to the Penal Code.

² There was no count 2 charged in the information.

³ Appellant completed and signed a "Felony Advisement of Rights, Waiver, and Plea Form."

court stated it “would impose the minimum fines and fees.” Appellant stated he understood and waived his constitutional rights, acknowledged he understood the consequences of his plea and accepted the terms of the negotiated agreement. The trial court found the plea was freely and voluntarily entered, and there was a factual basis for the plea. Defense counsel joined in the waivers of appellant’s constitutional rights and stipulated to a factual basis for the plea.

On September 23, 2011, in accordance with the plea agreement, the trial court sentenced appellant to state prison for the middle term of six years, suspended imposition of sentence and placed appellant on five years of formal probation on certain terms and conditions. The court ordered appellant to pay a restitution fine of \$1,200 pursuant to section 1202.4, subdivision (b), and imposed and suspended a parole revocation fine in the same amount pursuant to section 1202.45. The court granted the People’s motion to dismiss the remaining count 1 as part of the negotiated plea.

DISCUSSION

Section 1202.4, subdivision (b) requires every person convicted of a crime to pay a restitution fine, absent a finding by the trial court of compelling and extraordinary reasons. (§ 1202.4, subd. (b), (c).) At the time appellant entered his plea and was sentenced, the minimum fine for a person convicted of a felony was \$200. (Former § 1202.4, subds. (b)(1), (c), (d).)⁴ The sentencing court has the discretion to impose a fine of up to \$10,000, after assessing factors deemed relevant, although the court is not required to conduct a hearing or to make express findings as to those factors. (See § 1202.4, subds. (b)(2), (d) [listing various factors a court may consider in setting the fine amount].) In addition, the trial court is obligated to impose a parole revocation fine on every person who “is convicted of a crime and whose sentence includes a period of parole.” (§ 1202.45.) The parole revocation fine is to be the same amount as the restitution fine under section 1202.4, subdivision (b). (*Ibid.*) Defendants may negotiate

⁴ As of January 1, 2012, the minimum restitution fine increased from \$200 to \$240. (§ 1202.4, subd. (b)(1), as amended by Stats. 2011, ch. 358, § 1.)

the amount of these mandatory fines as part of their plea agreement. (*People v. Villalobos* (2012) 54 Cal.4th 177, 181.)

Here, although the parties did not negotiate the amount of the restitution and parole revocation fines as part of the plea agreement, prior to the entry of the plea, the trial court advised appellant that it would impose no more than the statutory minimum amounts for those fines. Appellant contends, the People acknowledge and we agree that because the trial court subsequently ordered appellant to pay restitution and parole revocation fines greater than the promised statutory minimum of \$200, the amount of those fines must be reduced. (Compare with *People v. Villabos, supra*, 54 Cal.4th 177, 184 [“[W]here the parties have not mentioned the amount of the fine during the plea negotiation, and where the trial court has not threatened or promised any particular amount of fine during the plea colloquy, the amount of the fine is not part of the plea agreement, and the trial court is free to impose a fine within the statutory range.”].)

DISPOSITION

The judgment is modified to reduce the \$1,200 restitution and parole revocation fines to \$200. As modified the judgment is affirmed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.