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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO DOMENICO ROMEO,

Defendant and Appellant.

H030153

(Santa Clara County
Super. Ct. No. CC513391)

I. INTRODUCTION

Defendant Roberto Domenico Romeo pleaded no contest to four felony and two misdemeanor counts pursuant to a negotiated plea agreement. The trial court sentenced defendant to three years, eight months in prison and imposed a restitution fine of \$2,400. On appeal, defendant contends that the trial court violated the plea bargain because he did not agree to the \$2,400 restitution fine and therefore, pursuant to *People v. Walker* (1991) 54 Cal.3d 1013 (*Walker*), the fine should be reduced to the statutory minimum of \$200. We disagree, for reasons that we will explain, and accordingly we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

On December 8, 2005, defendant was arrested after displaying symptoms of being under the influence of a stimulant and admitting to a police officer that he had used methamphetamine. The police officer determined that defendant was on probation for check fraud with a search and seizure clause and searched defendant

and his vehicle. The officer recovered two USB hard drives, approximately 24 checks belonging to different people, and a mailbox key. The USB hard drives contained a number of different bank logos, blank format forms for California driver's licenses and FBI identification cards, and input screens for printing checks. Further investigation included contacting some of the people identified on the recovered checks, who informed police that they had mailed the checks and did not know defendant.

After the preliminary hearing held January 20, 2006, the People filed an information charging defendant with four felony counts, including buying, receiving, concealing, or withholding stolen property (Pen. Code, § 496, subd. (a);¹ count 1), possession of a blank or unfinished check (§ 475, subd. (b); count 2), and possession of a completed check (§ 475, subd. (c); counts 3, 6). The information also alleged two misdemeanor counts, possession of burglar tools (§ 466; count 4) and being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a); count 5), as well as three prior felony convictions.

Defendant subsequently brought a motion to suppress evidence (§ 1538.5), which the trial court denied. The trial court also denied defendant's renewed motion to suppress evidence and his section 955 motion to dismiss the information. Thereafter, defendant entered into a negotiated plea agreement and pleaded no contest to all counts on March 22, 2006 in exchange for a prison term of three years, eight months; resolution of pending probation violations; the People's promise not to file any additional charges based on the preliminary

¹ All further statutory references are to the Penal Code unless otherwise indicated.

hearing evidence; and a *Harvey* stipulation.² Prior to accepting defendant's plea, the trial court did not give a section 1192.5 admonition.³

At the sentencing hearing held April 12, 2006, the trial court sentenced defendant to a total term of three years, eight months in state prison in accordance with the terms of the plea agreement. The trial court also imposed a restitution fine of \$2,400 (§ 1202.4) and a second \$2400 restitution fine, suspended (§ 1202.45)

Defendant filed a timely notice of appeal on May 1, 2006.

III. DISCUSSION

Defendant contends that the trial court violated the terms of his plea bargain by imposing a \$2,400 restitution fine to which he did not specifically agree. According to defendant, the restitution fine must be reduced to the statutory minimum of \$200, pursuant to *Walker, supra*, 54 Cal.3d 1013.

While defendant acknowledges that this court has rejected a similar argument in three cases (*People v. Dickerson* (2004) 122 Cal.App.4th 1374 (petn. for review den. Jan. 19, 2005) (*Dickerson*); *People v. Knox* (2004) 123 Cal.App.4th 1453 (petn. for review den. Jan. 19, 2005) (*Knox*); and *People v. Sorenson* (2005) 125 Cal.App.4th 612 (petn. for review den. Apr. 13, 2005)

² A *Harvey* stipulation permits the sentencing court to consider dismissed or uncharged counts in reaching its sentencing decision or disposition. (*In re Josh W.* (1997) 55 Cal.App.4th 1, 4, fn.2; *In re Devin J.* (1984) 155 Cal.App.3d 1096, 1098, fn.2; see generally *People v. Harvey* (1979) 25 Cal.3d 754.)

³ Section 1192.5 provides in relevant part, "If the court approves of the plea, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so."

(*Sorenson*)), he urges reconsideration of those decisions in light of Justice Mihara's dissent in *Knox* and the California Supreme Court's grant of review in *People v. Crandell* (review granted Aug. 24, 2005, S134883).

The People respond that, for the reasons stated in *Dickerson*, *Knox*, and *Sorensen*, the trial court did not violate the plea bargain by imposing a \$2,400 restitution fine. We determine that imposition of the \$2,400 restitution fine was lawful under *Walker* as well as our previous decisions in *Dickerson*, *Knox*, and *Sorensen*.

In *Walker*, the California Supreme Court did not rule that a plea bargain is violated whenever the trial court imposes a section 1202.4 restitution fine to which the defendant did not specifically agree as one of the terms of the plea agreement. Moreover, the *Walker* court did not require the parties to negotiate the amount of the restitution fine. (*Dickerson*, *supra*, 122 Cal.App.4th at p. 1386.) Instead, the court stated that "the restitution fine should generally be considered in plea negotiations." (*Walker*, *supra*, 54 Cal.3d at p. 1024.)

As our Supreme Court subsequently explained in *In re Moser* (1993) 6 Cal.4th 342, 356, "[i]n concluding that the imposition of [a] substantial fine constituted a violation of the plea agreement in *Walker*, we implicitly found that the defendant in that case reasonably could have understood the negotiated plea agreement to signify that no substantial fine would be imposed." The facts in *Walker* involved the trial court imposing a \$5000 restitution fine without having advised the defendant, prior to accepting his guilty plea, that he was subject to a mandatory restitution fine. (*Walker*, *supra*, 54 Cal.3d at p. 1019.) Thus, as we stated in *Knox*, "*Walker* turned on the court's assessment of the defendant's reasonable understanding of the plea agreement, which in turn resulted from the lack of an advisement concerning the restitution fine." (*Knox*, *supra*, 123 Cal.App.4th at p. 1461.)

In the present case, before accepting defendant's no contest pleas on March 22, 2006, the trial court advised defendant that he would be subjected to a mandatory restitution fine, as stated in the following colloquy:

“THE COURT: I would like to talk to you about some other consequences of your pleas here this morning. First of all, I will order restitution in this matter. I don't know if there is any or how much there is, but you must know there is a consequence of your plea? Do you understand that?”

“[DEFENDANT]: Yes, your Honor.”

“THE COURT: You would be subject to a restitution fund fine anywhere from two hundred to ten thousand dollars. Do you understand that?”

“[DEFENDANT]: Yes, your Honor.”

Defendant did not object to the imposition of a restitution fine above the statutory minimum of \$200. Subsequently, a probation report was filed on April 12, 2005, in which the probation officer recommended a restitution fine of \$2,400.⁴ At the time of the April 12, 2006, sentencing hearing, the trial court announced the following order regarding restitution fines: “A general order of restitution is made. A restitution fine of twenty four hundred dollars is the appropriate number . . . under the formula permitted by [section] 1202.4 [subdivision (b)]. An additional restitution fine of an amount equal to that imposed under [section] 1202.4 is imposed and suspended pursuant to [section] 1202.45 of the Penal Code.” Defendant did not object to the restitution fine of \$2,400 during the sentencing hearing.

We believe that defendant's failure to object to the imposition of the restitution fine, when he was advised prior to his plea that a restitution fine of

⁴ In the typed probation report, the amount of the restitution fine recommended was \$1,600, but that figure was crossed out and replaced with the handwritten notation “2400--.”

\$200 to \$10,000 would imposed and again when the \$2400 fine was imposed at sentencing, indicates that imposition of the restitution fine did not violate the terms of his plea bargain. In *People v. McClellan* (1993) 6 Cal.4th 367, 378, the California Supreme Court found that the defendant's failure to object to the requirement of sex offender registration under section 290 at the sentencing hearing suggested that the defendant "did not consider the registration requirement significant in the context of his plea agreement."

Similarly, this court has previously determined that a defendant's failure to object to the imposition of a restitution fine at the time of sentencing indicates that imposition of the fine does not violate the terms of the plea bargain (*Dickerson, supra*, 122 Cal.App.4th at p. 1385.) Additionally, failure to object "suggests an implicit agreement that the imposition and amount of any fines was left to the discretion of the sentencing court." (*Sorenson, supra*, 125 Cal.App.4th at p. 619.)

For these reasons, we conclude that defendant has not established that the trial court's imposition of a \$2400 restitution fine at sentencing violated his plea agreement.

IV. DISPOSITION

The judgment is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MCADAMS, J.

DUFFY, J.