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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMY DOUGLAS MORGAN,

Defendant and Appellant.

A133542

(Contra Costa County
Super. Ct. No. 050906750)

Jeremy Douglas Morgan appeals from a restitution order following his conviction of second-degree murder (Pen. Code, § 187)¹ enhanced due to his use of a firearm (§ 12022.5). Morgan appeared in propria persona at the restitution hearing but is now represented by counsel. He contends that the trial court violated his due process rights by refusing to grant his requested continuance of the restitution hearing after he was denied access to the law library in county jail. We remand to the trial court for a new restitution hearing.

I. BACKGROUND

On December 3, 2009, while represented by counsel, Morgan entered a no contest plea to second-degree murder (§ 187) with a firearm use enhancement (§ 12022.5). The court sentenced Morgan to 18 years to life in state prison, and restitution was left to be determined. In April 2011, the court notified Morgan of a proposed restitution order, and of his right to request a hearing to contest the amount of restitution pursuant to section

¹ All further statutory references are to the Penal Code.

1202.4. Under section 1202.4, subdivisions (f)(4)(A)–(C), the assistance provided a victim by the Restitution Fund is presumed to be a direct result of the defendant’s criminal conduct, but may be rebutted upon evidence offered by the defendant.

After he received the court’s notification, Morgan filed a request for a restitution hearing. He later requested to represent himself and be allowed “access to a Law Library and a phone to conduct and complete his legal research” as a pro per defendant, a request which he also sent to the district attorney’s office.

At the restitution hearing on July 8, 2011, the court intended to deny Morgan’s request to represent himself at the hearing as untimely. But once the district attorney called the court’s attention to the fact that Morgan had previously filed his request, the court granted Morgan permission to represent himself, and relieved defense counsel. When the court granted Morgan’s request, the judge told him, “Sir, you will be given Pro Per privileges if I grant your Ferretta [*sic*] motion within reason considering, again, this is a restitution hearing that you’re preparing for, not a trial.” The court also granted a two-week continuance to allow Morgan to prepare for the hearing.

On July 15, 2011, while Morgan was waiting for his next hearing, he filed a grievance form with the Contra Costa County Detention Facility stating that a jail official was delaying his preparation as a pro per defendant for the hearing. In response, facility personnel stated, “The Courts informed C.A.S. that your criminal case is complete and the resources for your restitution hearing is your responsibility.”

At the second restitution hearing on July 22, 2011, Morgan moved for another continuance and again requested the court to order pro per privileges, as the jail was not providing them. Upon examining Morgan’s grievance form and the facility’s response, the court reaffirmed that it had granted Morgan pro per privileges, particularly access to a law library, and that the jail had apparently denied them. The district attorney argued that a continuance was not warranted because the only issue to be addressed at the hearing was whether there was sufficient documentation to support the restitution claim. Since Morgan had received certified copies of the relevant receipts, the district attorney argued that Morgan had all the necessary evidence to rebut the statutory presumption. Thus,

proceeding with the hearing despite his inability to access resources such as a law library would not deprive him of due process.

Without making any determination regarding whether Morgan had reasonable access to legal research materials,² the court denied Morgan's request for a continuance. Morgan then requested the assistance of counsel because he felt unable to adequately represent himself after his motion to continue was denied. The court replied that Morgan was "playing games with the Court" in an attempt to remain in local custody. The court further found that Morgan's prior motion to continue and desire for counsel lacked credibility, and that he was "attempting to engage in unreasonable delay." The court denied his request for counsel and proceeded to conduct the hearing. Finding that the statutory presumption prevailed, the court ordered restitution in the amount of \$5,012.00. This timely appeal followed.

II. DISCUSSION

Morgan contends that the trial court violated his right to due process by refusing to grant him a continuance of the restitution hearing after he was denied access by jail personnel to a law library.

The California Supreme Court has recognized that a criminal defendant's right to self-representation, guaranteed by the state and federal Constitutions, " 'includes the right to reasonably necessary defense services.' " (*People v. Blair* (2005) 36 Cal.4th 686, 732 (*Blair*)). The Court has also held that "depriving a self-represented defendant of 'all means of presenting a defense' violates the right of self-representation" under the Sixth Amendment. (*Blair, supra*, 36 Cal.4th at p. 733, quoting *People v. Jenkins* (2000) 22 Cal.4th 900, 1040 (*Jenkins*)). Thus, a self-represented defendant "may not be placed in the position of presenting a defense without access to a telephone, law library, runner,

² The court did specifically find that the requested ancillary services of a private investigator, a legal runner, and mail were unreasonable given the narrow scope of the restitution hearing. However, though the court acknowledged that Morgan was denied access to a law library, it did not make any findings that access to such resources was similarly unnecessary or that Morgan had other means of accessing legal research.

investigator, advisory counsel, or any other means of developing a defense.” (*Jenkins, supra*, 22 Cal.4th at p. 1040.)

Nonetheless, “the Sixth Amendment requires only that a self-represented defendant’s access to the resources necessary to present a defense be reasonable under all the circumstances. [Citation.] [¶] Thus, the crucial question underlying . . . defendant’s constitutional claim[] is whether he had reasonable access to the ancillary services that were reasonably necessary for his defense.” (*Blair, supra*, 36 Cal.4th at pp. 733–734.) To prevail on such a claim, the defendant must show error and resulting prejudice. (*Id.* at p. 736.)

Here, Morgan did not have access to the resources reasonably necessary to present a defense at the restitution hearing. The record establishes that jail personnel denied Morgan access to a law library, despite the trial court’s order granting him pro per privileges. As the trial court observed, several other services requested by Morgan were unnecessary given the narrow scope of the restitution hearing.³ However, access to the law governing the restitution claim and the presumption concerning reimbursable expenses was reasonably necessary for Morgan’s preparation of a defense. By the district attorney’s own argument, Morgan’s right of self-representation entitled him to (1) obtain the records supporting the request for reimbursement, which he did, and (2) offer “whatever input he would like with respect to whether or not those charges are authorized pursuant to statute.” Offering such input necessarily required access to the statute and the cases construing it.

The trial court acknowledged its concern that Morgan was denied access to a law library, and stated that the statutory presumption did present a legal question. However, the court denied Morgan’s motion to continue the hearing. After it denied Morgan’s later

³ In addition to access to a law library, Morgan requested the services of a private investigator and a legal runner. The court determined that the services of a private investigator and a legal runner were irrelevant to Morgan’s defense to the restitution claim and thus did not grant them. On appeal, Morgan does not challenge the denial of these two services.

motion for appointment of counsel, the court found Morgan lacked credibility and opined that his motions were merely an attempt to remain in local custody. The court's credibility determination has no bearing on the denial of Morgan's access to the law library. Because there is no evidence that Morgan had an opportunity to conduct legal research or any other means of preparing a defense, Morgan was prejudiced when he was forced to proceed with the hearing.

III. DISPOSITION

The judgment of conviction is affirmed. The order of restitution is vacated and the matter remanded for a new restitution hearing.

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.