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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JANET C. MAJORS,

Defendant and Appellant.

A134588

(Napa County
Super. Ct. No. CR158493)

Appellant Janet C. Majors was convicted on her plea of nolo contendere of a felony violation of Penal Code section 368, subdivision (d),¹ theft by noncaretaker from an elder adult. The court dismissed two charged felony violations of section 476a, subdivision (a), issuance of nonsufficient funds checks in an amount in excess of \$450.

At the time of sentencing, on January 4, 2012, the court granted Major's motion pursuant to section 17, subdivision (b) and reduced the offense to a misdemeanor.² The court placed Majors on formal probation for a period of three years, ordered her to serve 60 days in jail and 160 hours on a work program, awarded 3 days of actual custody credits, but no conduct credits. The court also imposed a \$100 restitution fund fine, \$40 court security fee, \$71 jail booking fee, \$30 criminal conviction assessment, and \$240 per

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

² Although the matter was reduced to a misdemeanor, we have appellate jurisdiction because the information charged three felonies. (§§ 691, 949, 1235, subd. (a).)

year payment for probation supervision. The court ordered restitution to the victim in the amount of \$14,046.06, plus interest at 10 percent per year.

Majors filed a timely notice of appeal on January 31, 2012, challenging only the amount of restitution ordered.

Assigned counsel has submitted a *Wende*³ brief, certifying that counsel has been unable to identify any issues for appellate review. Counsel also has submitted a declaration confirming that Majors has been advised of her right to personally file a supplemental brief raising any points which she wishes to call to the court's attention. No supplemental brief has been submitted. As required, we have independently reviewed the record. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110.)

We find no arguable issues and therefore affirm.

BACKGROUND

In July 2011, Majors signed an agreement with the victim, who was 90 years old, for the lease of a home in Pacifica, California, at a rent of \$1850 per month.⁴ She paid the July rent with a cashier's check and wrote personal checks for a required \$1,500 deposit and the August rent. The personal checks were written on a Wells Fargo bank account which had been closed over a year earlier. Majors continued to occupy the victim's residence after her arrest and release on her own recognizance, and, the victim was required to retain an attorney and sue to obtain an unlawful detainer judgment and remove Majors from the property.

The victim claimed restitution totaling \$14,046.06, which included monies expended in obtaining the civil judgment, attorney fees and costs, rent (for the months of September, October, and part of November), late charges, charges for occupancy by a person not authorized by the lease, water usage, and damages to the premises. The

³ *People v. Wende* (1979) 25 Cal.3d 436.

⁴ The facts are taken from the probation report.

probation officer's presentence report included a victim restitution worksheet itemizing the loss.⁵

At the sentencing hearing, defense counsel argued that the harm to the victim was limited to the two bad checks that she had written, that restitution had been made on those checks, and that the other amounts claimed by the victim were a "civil matter."⁶ The prosecution argued that the essence of Majors' crime was obtaining the tenancy of the victim's property by trick or device, and that the victim was entitled to be made whole for the entire resulting loss. The court observed that the victim had incurred "some real significant loss" in removing Majors from the victim's property and was "out that money." "That's a consequence or a loss related to [Majors'] criminal conduct, and therefore, I think the restitution is appropriate."

DISCUSSION

Under section 1237.5 and California Rules of Court, rule 8.304(b), a defendant seeking to appeal after entering a guilty or no contest plea generally must first obtain a certificate of probable cause. (*People v. Panizzon* (1996) 13 Cal.4th 68, 74.) Since Majors did not seek or obtain a certificate of probable cause, the scope of issues cognizable on appeal is narrow. There are no cognizable issues relating to her guilt, or to her plea. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1097.) We therefore consider only the restitution order.

A trial court's obligation to order payment of restitution to victims of crime derives from article I, section 28, subdivision (b), of the California Constitution which requires that restitution be ordered in "every case, regardless of the sentence or

⁵ The victim's impact statement included a restitution claim totaling \$14,044.36 (rounded to \$14,044). The discrepancy in restitution claim totals appear to relate to minor differences in amounts of an attorney referral fee paid by the victim and the pro rata share of a water bill owed by Majors. We assume the probation officer, in the exercise of her duties, verified the actual amounts.

⁶ The victim obtained a civil judgment against Majors in the amount of \$9,000 in the unlawful detainer action, a copy of which the probation officer indicated was submitted to the court as part of the presentence report. The court did not appear to have a copy of the judgment itself, and it is not part of the record before us.

disposition imposed, in which a crime victim suffers a loss.” (Cal. Const., art. I, § 28, subd. (b), par. (13)(B); see *People v. Moloy* (2000) 84 Cal.App.4th 257, 259–260.) There is also a statutory mandate for victim restitution. (§ 1202.4, subds. (f)(3) & (g).) Victims have “a right to restitution based on the *full amount* of their losses.” (*People v. Birkett* (1999) 21 Cal.4th 226, 229; see § 1202.4, subd. (f)(2).)

Further, a trial court has broad discretion to impose probation conditions to foster rehabilitation and protect public safety. (*People v. Lent* (1975) 15 Cal.3d 481, 486.) “ ‘Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine.’ ” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1124, quoting *Kelly v. Robinson* (1986) 479 U.S. 36, 49, fn. 10.) Because a primary purpose of restitution is rehabilitation, trial courts have wide discretion on “how to fashion the amount and manner in which restitution is to be made.” (*People v. Carbajal*, at p. 1125, fn. 11.)

“In imposing restitution as a condition of probation, ‘[a] court may also consider [in imposing victim restitution] crimes which were charged but dismissed [citation]; uncharged crimes, the existence of which is readily apparent from the facts elicited at trial [citation]; or even charges of which the defendant was acquitted, if justice requires they be considered. [Citation.]’ [Citation.]” (*People v. Rubics* (2006) 136 Cal.App.4th 452, 459.)

No abuse of discretion is shown, and no arguable issue is presented.

DISPOSITION

The judgment is affirmed.

Bruiniers, J.

We concur:

Jones, P. J.

Needham, J.