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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CRAIG ANTHONY LENT,

Defendant and Appellant.

A143900

(Lake County
Super. Ct. No. CR935865)

I.

INTRODUCTION

Appellant Craig Anthony Lent appeals from the sentence and judgment imposed after he entered a negotiated disposition of his criminal case with the Lake County District Attorney's Office. The single issue he raises on appeal is his contention that the trial court committed reversible error by not affording him a hearing to contest the amount of victim restitution ordered as part of his sentence.

We conclude that appellant was afforded due process in that he had an opportunity before or during sentencing to contest the amount of restitution, and his counsel elected not to submit evidence. To the extent he argues that the trial court abused its discretion in not granting his counsel's request at the end of the sentencing hearing to set a separate, independent hearing on the amount of victim restitution, we conclude there was no abuse of discretion in denying the request. Accordingly, we affirm.

II.

PROCEDURAL HISTORY

A criminal information was filed on June 18, 2014¹, by the Lake County District Attorney charging appellant with robbery (Pen. Code, § 211)² (count I); burglary (§ 459) (count II); receiving stolen property (§ 496, subd. (a)) (count III); possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) (count IV); and assault with a deadly weapon and by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)) (count V). The information also alleged that appellant personally used a deadly and dangerous weapon during the commission of the robbery, within the meaning of section 12022, subdivision (b)(1). At his arraignment on July 22, appellant pleaded not guilty to all counts, and he denied the special allegation.

Thereafter, in accordance with a negotiated disposition, appellant withdrew his not guilty plea and entered an open plea of no contest to the robbery charge (count I), and he admitted the special section 12022, subdivision (b)(1) allegation as to that count. Pursuant to the plea bargain, the trial court granted the prosecution's motion to dismiss counts II through V in the interest of justice.

At the time of entering his plea appellant stipulated to a factual basis for his plea which included the following:

“On May 14th, 2014, the defendant went into the North Lake Pharmacy in Lakeport near the Sutter Hospital and in Lake County. He entered the pharmacy with a large knife. He walked behind the counter to . . . Pharmacist Mike Murray. And the defendant said to Mr. Murray words to the effect of ‘Give me Dilaudid—Dilantin—or I’ll kill you.’ He had his face covered with a bandana.

“Mr. Murray put several packages of Dilaudid, D-I-L-A-U-D-I-D, which is [a] prescription medication into a box and gave it to the defendant because he was in fear of

¹ All dates are in the calendar year 2014 unless otherwise indicated.

² All further statutory references are to the Penal Code unless otherwise specified.

. . . physical harm to himself and gave it to the defendant. And then the defendant fled the pharmacy and the area with the prescription medication.”

Finding a factual basis for appellant’s plea, and that appellant waived his constitutional rights, the trial court accepted his plea on count I and found appellant guilty. The case was referred to the county probation department for its recommendations and report, and sentencing was scheduled for October 14.³

The probation report was submitted on October 8, and later updated with custody credit calculations on October 29. As relevant here, the October 8 report addressed the matter of victim restitution. It included an email from the victim, pharmacist Michael Murray, who described the fear and anxiety he experienced during the robbery, as well as how that event impacted his life. Because of the experience, Mr. Murray reported that he had to give up his profession of 43 years and leave his job at the pharmacy since he no longer could concentrate while filling prescriptions. Thus, he left six months before his expected and planned retirement at a loss of income of \$72,000. In conclusion he noted: “Craig Lent might have been unsuccessful at robbing drugs from North Lake Pharmacy, but he was definitely successful of robbing me financially, spiritually and emotionally. My life is now driven by fear rather than joy.”

Included in the probation report’s recommendations was that appellant be ordered to pay this \$72,000 amount in restitution, plus interest at the rate of 10 percent per year.

On October 28, appellant’s counsel filed a statement in mitigation and application for probation. In it counsel set forth the facts and argument in support of appellant’s request for a grant of probation. Although references were made in the statement to the probation report, there was no comment on the issue of victim restitution.

Sentencing took place on November 4. The hearing began by the trial court indicating that it had read and considered the probation report. The court then inquired if the parties stipulated to the receipt of that report into evidence to which both sides answered in the affirmative. Again in response to an inquiry from the court, defense

³ The sentencing hearing was later continued to November 4.

counsel indicated that there was no evidence to present except that the defense was prepared to call three witnesses. The first witness was Ms. Bonnie Anne Cobbs, who had known appellant most of his life and who had experience in substance abuse rehabilitation programs. It was Cobbs's opinion that appellant would make an excellent candidate for a structured rehabilitation program.

The second witness called by the defense was appellant's mother, Lynda Lent, who testified about appellant's substance abuse history and his efforts to overcome his addiction. She also testified about her belief that a structured rehabilitation program would be best for appellant and society.

The third witness was Patricia White, a local attorney who married into appellant's family about 15 years ago. White opined, based on her personal knowledge of appellant, that a rehabilitation program would be the best outcome for appellant.

At the conclusion of the witnesses' testimony, the court asked if the victim was present and was told that he was not, but that he had submitted a letter. The court indicated that the letter had been reviewed. Defense counsel then stated that he was unsure what letter was being referred to. The court answered that it was attached to the probation report. In response to the court's inquiry whether defense counsel received a copy, counsel responded, "I have heard—I've spoken with probation about the content."

After hearing from the prosecutor on the issue of sentencing, the trial court called on defense counsel to comment. Defense counsel's remarks were largely confined to the question of whether appellant should be sent to state prison or granted probation so he could be admitted into a structured rehabilitation program.

The matter was then submitted by counsel who also both indicated no reason why sentence should not then be pronounced. The trial court denied probation and sentenced appellant on count I to the middle term of three years in state prison, with a consecutive one-year term imposed pursuant to section 12022, subdivision (b)(1). The court also imposed a \$1,200 restitution fine pursuant to section 1202.4, subdivision (b), and imposed, but suspended, a parole revocation fine in an equal amount pursuant to section 1202.45. The court imposed a \$40 court security assessment pursuant to section

1465.8, subdivision (a)(1); a \$30 criminal conviction assessment pursuant to Government Code section 70373; a \$390 fine plus a penalty assessment of \$1,209 and alcohol assessment of \$20 pursuant to Vehicle Code section 23536. The court ordered appellant to pay victim restitution in the amount of \$72,000 plus interest. The court awarded appellant 178 days of actual credit pursuant to section 2900.5, plus 26 days of local conduct credit pursuant to section 2933.1.

After sentencing was concluded, including an admonition to appellant concerning his right to appeal, defense counsel asked if the victim had made a claim for restitution in a certain amount. When the court answered affirmatively, counsel then asked, “I wonder if we then can have a hearing to determine how that amount was arrived at.” The court noted that no objection had been made up to that point on the subject of victim restitution, so the request was denied, to which counsel commented, “Okay.”

Thereafter, counsel requested that a certificate of probable cause issue, pursuant to section 1237.5, to allow an appeal from the denial of his request for a separate hearing on the issue of victim restitution. The court granted the request, and this appeal followed.

III.

ANALYSIS

A. Appellant Was Not Denied Due Process In That He Was Afforded the Opportunity to Be Heard As to the Amount of Victim Restitution Awarded

As noted in the Introduction, the sole issue raised on appeal is appellant’s claim that his due process rights were violated when he was denied a separate hearing on the amount of victim restitution before the court imposed restitution of \$72,000.

The California Constitution gives crime victims a right to restitution and requires a court to order a convicted wrongdoer to pay restitution in every case in which a crime victim suffers a loss. (Cal. Const., art. I, § 28, subd. (b)(13)(B).) To implement this requirement, section 1202.4, subdivision (f) generally provides that “in every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or

victims or any other showing to the court.” The restitution amount “shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct.” (§ 1202.4, subd. (f)(3).)

The submission of a claim for restitution by a crime victim constitutes a prima facie showing of the amount of the victim’s damages. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1048) Once a prima facie showing of the victim’s loss has been made, the burden shifts to the defendant to demonstrate that the amount of the loss is other than that claimed by the victim. (*People v. Giordano* (2007) 42 Cal.4th 644, 664; *People v. Millard* (2009) 175 Cal.App.4th 7, 26 (*Millard*).) We review the trial court’s restitution order under the abuse of discretion standard. (*People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1172.) Where there is a factual and rational basis for the order under the substantial evidence standard, we will not find an abuse of discretion. (*Millard*, at p. 26.)

Important to the precise issue appellant raises is the procedural rule that the amount of restitution normally is to be determined at sentencing. (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1319.) Thus, the scope of a defendant’s due process rights at a hearing to determine the amount of restitution is very limited: “ ‘A defendant’s due process rights are protected when the probation report gives notice of the amount of restitution claimed . . . , and the defendant has an opportunity to challenge the figures in the probation report at the sentencing hearing.’ ” (*People v. Resendez* (1993) 12 Cal.App.4th 98, 113, italics omitted (*Resendez*).) “As long as the defendant is given an opportunity to respond to any matters in the probation report regarding restitution, due process is satisfied.” (*People v. Campbell* (1994) 21 Cal.App.4th 825, 831.)

The record amply supports the conclusion that appellant’s due process rights were respected in making an award of victim restitution in this case. After the court accepted appellant’s no contest plea, the matter was referred to the probation department which submitted its original report on October 8, almost a full month before sentencing on November 4. That report included an email statement from the robbery victim, Michael

Murray, who described the devastating emotional toll he suffered when appellant robbed the pharmacy at knifepoint while threatening to kill the elderly pharmacist. Because of that experience, Mr. Murray left his longtime employment a full six months earlier than he and his spouse planned for his retirement. The early retirement cost Mr. Murray \$72,000 in lost income. Based on this statement, the probation report recommended that victim restitution be awarded in the amount claimed, plus interest.

The record also leaves no doubt that appellant's counsel received a copy of that probation report. Several weeks after the report was issued, on October 28, appellant's counsel filed a statement in mitigation and application for probation. In it counsel set forth the facts and argument in support of appellant's request for a grant of probation, making references to the contents of the probation report, although no comment was included on the issue of victim restitution.

At the commencement of the sentencing hearing on November 4, the parties stipulated to the admission into evidence of the October 8 probation report, which included both the department's recommendation that victim restitution be set at \$72,000, as well as the aforementioned statement by Mr. Murray concerning his income loss resulting directly from the robbery. Defense counsel confirmed that counsel was aware of the contents of the letter and had discussed it with the probation department. The defense then called three witnesses during the sentencing hearing all of whom addressed the issue of probation versus a prison sentence. These witnesses constituted all of the evidence that the defense produced at the sentencing hearing. After presentation of the witnesses testimony, appellant's counsel was afforded an opportunity to address the court on the subject of sentencing and did so. During his remarks, no challenge was made to the recommended victim restitution amount, nor did appellant at any time during the sentencing offer any evidence countering Mr. Murray's statement that was admitted into evidence.

Sentence was then pronounced by the court, which included making an award of victim restitution of \$72,000. It was only after sentencing was concluded, including setting the amount of victim restitution, that defense counsel "wondered" if appellant

could have a hearing on the amount of victim restitution.⁴ No offer of proof was made as to why a hearing was appropriate, including an offer of what rebuttal evidence, if any, would be forthcoming on the issue.

In light of this record, was find no abuse of discretion in the trial court's denial the tardy request for a separate, post sentencing restitution hearing. Certainly, there is no due process violation given the circumstances. Appellant was well aware of the proposed and requested restitution award, he had ample opportunity to address the matter both before and during the sentencing hearing, and he made no effort to present evidence on the subject.

Appellant's reliance on *Resendez, supra*, 12 Cal.App.4th 98, and *People v. Sandoval* (1989) 206 Cal.App.3d 1544 (*Sandoval*), does not advance his position. In *Sandoval*, the probation report recommended victim restitution for property damage of \$1,000. At sentencing the trial court unexpectedly ordered the defendant to pay \$4,000 in restitution. (*Sandoval*, at p. 1550.) In *Resendez*, the probation report recommended an award of victim restitution of \$9,000. At sentencing the trial court did not follow the probation department's recommendation and instead imposed \$100,000 in restitution. (*Resendez*, at p. 111.) In both cases, no objections were made by the respective defendants to the amount of restitution actually imposed. The appellate courts concluded there was no waiver to challenges to the amounts set on appeal under those circumstances. More germane to the issue we address is the secondary conclusion that the unanticipated imposition of "a restitution order totally at odds with the recommendations of the probation report," constituted a denial of due process where the court also failed to afford the defendants the opportunity to address the increased amounts before they were imposed. (*Id.* at p. 114.)

⁴ Since the issue is not addressed by respondent, we assume without deciding that the asserted error in not conducting a separate hearing on the amount of victim restitution was adequately preserved by counsel's musing on the subject at the conclusion of the sentencing hearing.

Obviously, these cases are factually inapposite to our case. Indeed, by parity of reasoning, and consistent with the authorities cited earlier in this opinion, where the trial court imposes the victim restitution amount recommended by the probation department and no effort is made by the defendant to challenge that amount before sentence is imposed, no due process violation occurs because the defendant had a “full opportunity” to challenge the amount and simply failed to do so.

This is precisely the holding in *People v. Blankenship* (1989) 213 Cal.App.3d 992, 996–997, which appellant also cites in his appellate briefs. Decided after *Sandoval*, the *Blankenship* court distinguished that earlier case because of the trial court’s departure from the victim restitution amount recommended in the probation report. (*Id.* at pp. 996–997.) Like this case, the trial court in *Blankenship* followed the restitution recommendation of the probation department, and the defendant did not challenge that amount at the sentencing hearing. Because the court concluded that Blankenship had an opportunity to challenge the figures in the probation report at the sentencing hearing, but did not, there was no lack of due process in the trial court’s award of victim restitution in the amount recommended in the probation report. (*Id.* at p. 997.)

In light of all of the foregoing, we conclude there was no violation of appellant’s due process rights in imposing the amount of restitution at the time of his sentencing, and the trial court did not abuse its discretion in not setting a separate hearing for that purpose or in imposing victim restitution in the amount of \$72,000.

IV. DISPOSITION

The sentence and judgment are affirmed.

RUVOLO, P. J.

We concur:

REARDON, J.

RIVERA, J.,