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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM MONCADA,

Defendant and Appellant.

A146682

(Alameda County
Super. Ct. No. CH47025)

Defendant William Moncada is serving a 20-year prison sentence following a no contest plea in 2009 to multiple felonies arising out of his sexual abuse of his young stepdaughter. He appeals from the denial of a motion he filed in 2015 for reconsideration of the \$6,000 restitution fine imposed at the time of sentencing. His appointed counsel has filed a brief advising that he finds no arguable issues to present, and pursuant to *People v. Wende* (1979) 25 Cal.3d 436 requests this court to conduct an independent review of the record to determine if there are any arguable issues that require briefing. Counsel advised defendant he was entitled to file a supplemental brief, and defendant elected not to do so.

The nature of defendant's crimes is not relevant to his appeal from the order denying his motion for reconsideration. We therefore briefly set forth the background as it was summarized in the probation officer's report and recommendation:

"On August 28, 2008, at approximately 1705, police were dispatched to investigate a report of a child molestation. The reporting party indicated that a 14-year old female had gone to her office for a routine medical exam. During the exam, the

victim disclosed that she had been victim of on-going molestation by her step-father. The victim also indicated that the sexual molestation had been taken [*sic*] place over the previous two years. The doctor had the victim take a urine pregnancy test which showed she was currently pregnant. When questioned as to whom the father was, the victim revealed that it was the defendant. Subsequent DNA tests confirmed this to be true.

“The victim and her younger sister lived with the defendant and her mother in Fremont. The victim grew up considering the defendant to be her father, as he had been in a long-term relationship with her mother.

“The victim described to authorities how the defendant forced her to have sexual intercourse with her beginning at age 11. She indicated the defendant would show the victim ‘Playboy’ movies and then would tell her to re-enact the movies with him. The defendant would have her masturbate him, orally copulate him, and have vaginal sex with him. The defendant would coerce her into doing these acts by telling her she would ruin the family if she told anyone. The defendant would also give her privileges and presents if she cooperated with his sexual advances. Whenever the victim indicated she did not want to have sex with the defendant, he would threaten to take away her computer and cell phone, and keep her from seeing her friends. The victim estimated the defendant would force her to have sex with him approximately two times per week, with so many incidents that there were ‘too many to remember.’

“In a pre-text telephone call conducted by authorities, the victim informed the defendant she was pregnant. During the call, the defendant stated, ‘If you tell the truth I’ll get 20 years. Don’t tell the truth, it’ll make me a prisoner.’ The defendant was arrested.”

On September 2, 2008, the District Attorney of the County of Alameda filed a complaint charging defendant with the following 22 felonies: one count each of continuous sexual abuse of a child under the age of 14, forcible lewd act upon a child, and attempted sodomy by use of force; two counts each of aggravated sexual assault of a child and aggravated sexual assault (oral copulation); and five counts each of lewd act upon a child, forcible oral copulation, and forcible rape. The complaint also alleged

multiple enhancements, including that many of the offenses were serious felonies within the meaning of Penal Code section 1192.7, subdivision (c) and violent felonies within the mean of section 667.5, subdivision (c).

On June 5, 2009, pursuant to a negotiated plea agreement, defendant pleaded no contest to continuous child sexual abuse, oral copulation on a child younger than 14 years of age with the defendant more than 10 years older than the child, and forcible oral copulation, all serious and violent felonies.

On August 14, 2009, defendant was sentenced to 20 years in state prison. The court also imposed a \$6,000 restitution fine (Pen. Code, § 1202.4, subd. (b)) and a \$6,000 parole restitution fine (*id.*, § 1202.45), the latter of which it stayed pending successful completion of parole. It reserved victim restitution.

Six years later, defendant filed a “Motion for Hearing to Reduce and or Vacate the Restitution Fine, Pursuant to Penal Code Section 1202.4.” He argued that in imposing the \$6,000 restitution fine, the “trial court never took into consideration [defendant’s] ability to pay the restitution fine, the affects of the California Department of Corrections and Rehabilitation (‘CDCR’) policy and regulations, and the impact upon [defendant’s] family members by the restitution fine and those policy and regulations in combination, nor actual losses suffered.” More specifically, defendant complained that he had only been able to pay \$1,190 since his 2009 conviction and, at that rate, it would take him 30 years to pay the fine. He was also unable to afford school supplies necessary to obtain a college education, hygiene items, and postage materials. According to defendant, the fine was excessive and failed to take into consideration the actual loss suffered by the victim, as required by Penal Code section 1202.4, subdivision (f).

On September 9, 2015, the trial court denied defendant’s motion, noting that defendant “appear[ed] to be confusing a victim restitution order with a restitution fine.” The court stated that to the extent defendant was seeking modification of the \$6,000 restitution fine imposed at the 2009 sentencing hearing, it lacked “jurisdiction to modify the restitution fine because criminal proceedings have concluded and the judgment is final.” The court indicated that it did have jurisdiction to modify an order of victim

restitution, but that defendant lacked standing to bring such a motion, since only the court, district attorney, or victim was authorized to do so under Penal Code section 1202.46. Moreover, per Penal Code section 1202.4, subdivision (g), defendant's inability to pay was not a compelling and extraordinary reason not to impose a restitution order. The court noted that in any event it had reserved jurisdiction on victim restitution without imposing any such restitution.

On October 22, 2015, defendant filed a notice of appeal.

In accordance with *People v. Wende, supra*, 25 Cal.3d 436, we have reviewed the record on appeal. We find no arguable issues requiring briefing. We therefore affirm the order denying defendant's motion for reconsideration of the \$6,000 restitution fine.

Richman, J.

We concur:

Kline, P.J.

Stewart, J.

A146682; *P. v. Moncada*