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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

D. W.,

Defendant and Appellant.

2d Crim. No. B232496
(Super. Ct. No. JV46837)
(San Luis Obispo County)

D. W. appeals a restitution order to pay the State Victim Compensation and Government Claims Board \$11,191.50 for mental health services provided to a rape victim and victim's family after appellant pled no contest to sexual battery by restraint. (Pen. Code, §§ 243.4, subd. (a); 1202.4, subd. (f)(3)(C).)¹ We affirm.

Facts

In December 2007 a juvenile wardship petition was filed charging appellant with forcible rape of a 14-year-old (§ 261, subd. (a)(2)), sexual battery by restraint (§ 243.4, subd. (a)), and sexual penetration of a minor (§ 289, subd. (h)). Pursuant to a May 1, 2008 negotiated plea, appellant pled no contest to sexual battery by restraint and was granted probation. The trial court ordered appellant to pay victim restitution in an

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

amount to be determined by the probation officer. (Welf. & Inst. Code, § 730.6, subd. (h).)

State Victim Compensation and Government Claims Board (Board) submitted a \$945 restitution request which appellant paid on September 1, 2009.

In 2010 and 2011 Board submitted reimbursement requests totaling \$11,191.50 for mental health services provided to the victim and victim's siblings and parents. Appellant claimed that he had fulfilled his restitution obligation and the mental health services were not related to appellant's criminal conduct. The prosecution argued that Board's records created a rebuttable presumption that the mental health services were directly related to appellant's criminal conduct. (See § 1202.4, subd. (f)(3)(C)).

The trial court found that appellant had offered no affirmative evidence to rebut the presumed validity of Board's records and denied appellant's request to cross-examine the psychotherapist and conduct an in camera review of Board's records.² (§ 1202.4, subd. (f)(4)(B) & (C).) Appellant was ordered to reimburse Board for \$11,191.50 for the services provided.

Victim Restitution

We review for abuse of discretion. (*People v. Mearns* (2002) 97 Cal.App.4th 493, 498.) Victim restitution is constitutionally and statutorily mandated in California. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045; *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1386.) Direct restitution includes mental health expenses "incurred after the occurrence of the crime, and which may continue to be incurred for a substantial period of time following a restitution hearing. [Citation.]" (*People v. Giordano* (2007) 42 Cal.4th 644, 658.) If the State Restitution Fund pays the victim's

² "If the defendant *offers evidence to rebut the presumption . . .*, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order." (§ 1202.4, subd. (f)(4)(C), *Italics added.*)

mental health services, the amount paid "shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered." (§ 1202.4, subd. (f)(4)(A).)

Reimbursement billings by the Board are "inherently reliable." (*People v. Cain* (2000) 82 Cal.App.4th 81, 86.)³ The Legislature has provided: "The amount of assistance . . . shall be established by copies of bills . . . reflecting the amount paid by the board. . . . Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement." (§ 1202.4, subd. (f)(4)(B).)

It is uncontroverted that Board approved and paid for counseling services which are presumed to be the direct result of appellant's criminal conduct. (See *e.g.*, *People v. O'Neal* (2004) 122 Cal.App.4th 817, 818-819 [counseling services to brother of molestation victim]; *People v. Garcia* (2010) 185 Cal.App.4th 1203, 1217 [billing summary of therapy charges constituted substantial evidence].) When appellant entered the change of plea and requested probation, he was on notice that the victim and victim's family were suffering psychological problems. In a victim impact statement, victim's parents reported that victim "has suffered and endured traumatic pain" over the last six

³ Government Code section 13957, subdivision (a)(2) provides that Board may not pay for victim mental health services unless the services "became necessary as a direct result of the crime. . . ." Mental health providers must submit verified claims and are paid based on rates and limitations set by the Board. (Cal. Code Regs., tit. 1, §§ 64.26 to 649.28.)

Board's custodian of records declared: "The treating therapist provided verification . . . that the treatment rendered to the above victims is necessary as a direct result of the crime and 100% related to the crime committed by the above defendant."

Appellant argues that the restitution order is a windfall to the victims and treating therapist. We disagree. Board's records indicate that the therapist billed \$16,970 and was paid \$9,987.50 for counseling services from January 22, 2008 to January 23, 2010. The order reimburses Board, not the therapist or the victim.

months and "the pain continues to extend to us as parents as well as our other family members."

Appellant complains that most of the victim's counseling expenses were incurred 14 to 23 months after the offense and the victim's siblings and parents' counseling expenses were incurred almost two years after the offense. Appellant was ordered, as a condition of probation, to pay victim restitution which includes prospective mental health counseling expenses. " '[N]othing in the language of the Constitution suggests an intent to limit the right to restitution for financial losses occurring within a particular time frame, or restitution to expenses incurred before sentencing.'" (*People v. Giordano, supra*, 42 Cal.4th at p. 658.)

Fair Hearing

Appellant asserts that he was denied a fair hearing because the trial court denied his request to cross-examine the victim's therapist and conduct an in camera review of Board's records. (See Welf. & Inst. Code, § 730.6, subd. (h)(4) [authorizing hearing to determine restitution amount].) Because restitution is a civil proceeding, appellant's due process rights are limited and must be balanced against the victim's privacy interests. (*People v. Cain* (2000) 82 Cal.App.4th 81, 86-87.) The standard of proof is preponderance of the evidence, not proof beyond a reasonable doubt. (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045.) The defendant has no constitutional right to cross-examine the victim's therapist. (*People v. Cain, supra*, 82 Cal.App.4th at p. 87.)

In *People v. Garcia* (2010) 185 Cal.App.4th 1203, defendant claimed that the rape victim waived the psychotherapist privilege by requesting restitution. The Court of Appeal rejected the argument and concluded that inquiry into the specifics of the patient-therapist communications was unnecessarily invasive. (*Id.*, at p. 1213.)

"Requiring a victim of a sexual assault or rape, such as Doe, to disclose the details of her communications with her therapist when requesting restitution for therapy costs would tend to deter a victim requesting restitution for the cost of therapy: ' "It would be too much to expect them to do so if they knew that all they say – and all that the psychiatrist

learns from what they say – may be revealed to the whole world from a witness stand.' " ' [Citation.]" (*Id.*, at p. 1212.)

Appellant makes no showing that the trial court abused its discretion or that the restitution amount lacks a factual and rational basis. (*People v. Keichler, supra*, 129 Cal.App.4th at p. 1045; *People v. Balestra* (1999) 76 Cal.App.4th 57, 63.)

The judgment (order to pay \$11,191.50 restitution) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

ZELON, J.*

* Assigned by the Chairperson of the Judicial Council.

Roger T. Piquet, Judge

Superior Court County of San Luis Obispo

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