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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

DOUGLAS WIDICK,

Defendant and Appellant.

C067760

(Super. Ct. No. P10CRF0040)

Defendant Douglas Widick pleaded no contest to two counts of child molestation, in exchange for dismissal of two other counts of the same crime against the same victim and a stipulated prison term. On appeal, he challenges the constitutionality of Penal Code<sup>1</sup> section 1202.4, subdivision (f)(3)(F), pursuant to which the trial court awarded the victim \$10,000 in noneconomic damages, and contends the \$300 sex offender fine assessed under section 290.3 fine must be reduced to \$100. The People concede only that

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<sup>1</sup> Further undesignated section references are to the Penal Code.

the sex offender fine must be reduced. We agree with the People that the fine must be reduced, but to \$200 not \$100. We shall do so and otherwise affirm the judgment.

### **BACKGROUND**

In 2010, defendant was charged with having committed lewd acts against John Doe between January 1995 and March 1998, when the victim was under 14 years old (§ 288, subd. (a)).

Defendant pleaded no contest to two molestation charges and was sentenced to prison.

After sentencing, the victim sought restitution in the amount of \$10,000 for psychological harm he suffered as a result of the molestation, pursuant to section 1202.4, subdivision (f)(3)(F), which allows the trial court to award victim restitution for “[n]oneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.” In support of his claim for noneconomic damages, the victim submitted a declaration explaining the ways in which the crimes had a significant emotional and psychological impact on his life, contributing to (among others) his experiencing severe social anxiety, panic attacks, “a very bad stuttering issue,” and low self-confidence.

At a contested restitution hearing, defendant argued that the statute allowing an award of noneconomic damages is unconstitutionally vague and overbroad, violates his constitutional right to a jury trial on the issue of damages, and violates the equal protection clauses of the federal and state Constitutions. The trial court entered an order for restitution, awarding the victim noneconomic damages of \$10,000.

## DISCUSSION

### *I. The Trial Court Did Not Err in Awarding Noneconomic Damages*

Section 1202.4, subdivision (f), requires the trial court to order the defendant to pay restitution to the victim “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.” With one exception, restitution orders are limited to the victim’s economic damages. The exception is for “[n]oneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.” (§ 1202.4, subd. (f)(3)(F); *People v. Smith* (2011) 198 Cal.App.4th 415, 431.)

On appeal, defendant renews his arguments that (1) noneconomic damages cannot be awarded under this provision without violating his right to a jury trial; and (2) a restitution order for noneconomic damages, applicable only to violations of section 288 and not to other crimes, violates his state and federal equal protection rights.

Defendant acknowledges that this court recently rejected these very arguments in *People v. Smith, supra*, 198 Cal.App.4th 415. In *Smith*, we upheld an order that the defendant pay the victim of child molestation \$750,000 in noneconomic damages. (*Id.* at pp. 420, 440-441.) In so doing, we concluded that a restitution order for noneconomic damages is a criminal sentencing order, and, as such, does not give rise to a jury trial right. (*Id.* at pp. 433-434.) We also rejected the argument that child molesters are similarly situated to other criminals; to the contrary, their differential treatment is rationally related to the legitimate public goal of protecting child victims of sexual abuse. (*Id.* at pp. 434-435.)

Defendant raises these constitutional claims to preserve the issues for hypothetical further review and/or so that we may reconsider our decision in *Smith*. As nothing in defendant’s brief on appeal convinces us to reach a different conclusion on the constitutionality of section 1202.4, subd. (f)(3)(F), we decline to do so.

***II. The Sex Offender Fine Must Be Reduced from \$300 to \$100***

At sentencing, the trial court imposed a \$300 fine pursuant to section 290.3. Defendant contends the underlying fine must be reduced to \$100, the amount authorized by section 290.3 at the time of the offense. The People agree. (*People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1248 [under ex post facto principles, the assessable amount of a section 290.3 fine is calculated as of the date of the offense].)

We agree that the section 290.3 fine should be reduced to the amount authorized by that section at the time of the offenses. But that amount is \$200, not \$100. (Former § 290.3, as amended by Stats. 1994, ch. 867, § 3.5)

We also note that no section 290.3 fine appears in the abstract of judgment. We shall order the abstract amended to include the court's imposition of the section 290.3 fine (*People v. Mitchell* (2001) 26 Cal.4th 181, 185), albeit in the correct amount.

**DISPOSITION**

The judgment is amended to reduce the fine imposed pursuant to Penal Code section 290.3 from \$300 to \$200. In all other respects, the judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect the imposition of a \$100 fine under section 290.3 and to forward a certified copy of the correct abstract of judgment to the Department of Corrections and Rehabilitation.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

BUTZ, J.