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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY SANGALANG,

Defendant and Appellant.

C067869

(Super. Ct. No.
07F02246)

Defendant Johnny Sangalang was sentenced to 25 years to life in prison, after attacking a fellow inmate. On appeal, he contends the trial court's imposition of a \$10,000 restitution fine was an abuse of discretion. We affirm.

BACKGROUND

On December 13, 2006, while incarcerated in Folsom State Prison, defendant and two other inmates attacked a fourth inmate by the handball courts. A correctional officer stopped the attack by firing impact rounds (rubber bullets) at the attackers and all the inmates were ordered to "get down." A razor blade and an inmate-manufactured stabbing instrument were found nearby. The victim inmate sustained a laceration from his

eyebrow to his lower cheek, which required three sutures. He also sustained three or four additional lacerations to his head, a laceration on his hand, and abrasions on his knee.

The jury was unable to reach a verdict on the charge of attempted murder, but found defendant guilty of assault with a deadly weapon. (Pen. Code, § 245, former subd. (a)(1).)¹ The jury also found defendant had been previously convicted of three serious felonies including assault with a deadly weapon by means of force likely to produce great bodily injury with personal infliction of great bodily injury (§§ 245, former subd(a)(1), 12022.7), robbery (§ 211), and assault with a deadly weapon (§ 245, former subd. (a)(1)).

The trial court sentenced defendant to 25 years to life, consecutive to the term he was already serving. When the trial court imposed a \$10,000 restitution fine pursuant to section 1202.4, as recommended in the probation officer's report, defense counsel objected, as follows:

"[DEFENSE COUNSEL]: First of all, I would ask, it may seem like a small thing, but it's, for prisoner, a very important thing. I would ask that the Court reduce that fine to the minimum statutory fine of two hundred dollars because Mr. [Sangalang] is being sentenced to life, and he is simply not going to be able to purchase the necessary items for survival in

¹ Further undesignated statutory references are to the Penal Code.

a prison like soap, razor blades, and so on if he is saddled with an enormous fine. I think --

"THE COURT: Razor blades like the one used in this case?

"[DEFENSE COUNSEL]: No. I mean, whatever you are allowed to have. So -- there are minimum comforts for a person serving a prison sentence including a life sentence, and to deprive him of that on top of taking away the rest of his life seems, to me, sort of unnecessary.

"I would ask the Court to reduce it in the Court's discretion, and beyond that I simply wanted to . . . put my objection . . . to the sentence as a violation of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, and, specially, that it constitutes cruel and unusual punishment.

"THE COURT: Your request is denied.

"The sentence is imposed."

DISCUSSION

Defendant contends the trial court abused its discretion by imposing a \$10,000 restitution fine. We disagree.

In setting the amount of the fine, the court must consider "any relevant factors, including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime." (§ 1202.4, subd. (d).) The trial court's discretion in

establishing the amount of the restitution fine will not be disturbed on appeal absent a clear abuse of discretion. (*People v. Giminez* (1975) 14 Cal.3d 68, 72; *People v. Lewis* (2009) 46 Cal.4th 1255, 1321.)

In this case, the probation officer recommended a \$10,000 restitution fine for an offense that resulted in the imposition of a 25 years to life sentence, and the court adopted the probation officer's recommendation.

Defendant argues that the amount was excessive since, having been sentenced to a term of 25 years to life in prison, his "financial prospects with respect to his ability to pay were severely limited."

It is defendant's burden, however, to demonstrate his inability to pay (§ 1202.4, subd. (d)), and merely relying on his extended incarceration is not enough to meet that burden. Even if defendant had no existing financial resources from which to pay the fine, he fails to offer anything to show that he will not be able to earn enough money during his long period of incarceration to allow him to pay the fine. The ability to earn prison wages, in the absence of any showing an inmate is disabled or unable to earn prison wages, constitutes substantial evidence to support the imposition of the restitutionary fine. (*People v. Gentry* (1994) 28 Cal.App.4th 1374; *People v. Frye* (1994) 21 Cal.App.4th 1483, 1486-1487.)

Defendant also argues the remaining factors which the trial court is required to consider prohibit the imposition of any

fine in excess of the statutory minimum of \$200 in this case.² He reaches this conclusion by pointing out that there was a single victim, no victim restitution awarded, and he did not derive economic gain from the attack. He also characterizes his crime as being "one of four inmates involved in a prison altercation in which one of the participants received three stitches as well as some scratches and scrapes."

We disagree with defendant's characterization of the seriousness of his offense. Defendant and two other inmates attacked and injured an inmate, in the prison yard, with an illegal and deadly weapon. Such violence threatens the safety of all the inmates and, indeed, correctional personnel, in addition to the safety of his victim, and is a serious offense. (See *Bell v. Wolfish* (1979) 441 U.S. 520, 546 [60 L.Ed.2d 447, 473].)

Under the circumstances, the trial court did not act arbitrarily or capriciously, and did not exceed the bounds of reason, in setting the amount of the restitution fine. (See *People v. Giminez, supra*, 14 Cal.3d at p. 72.)

² We note that even under the optional statutory formula of "two hundred dollars (\$200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted," which the trial court may employ to determine what is "commensurate with the seriousness of the offense," the restitution fine would amount to \$5,000. (§ 1202.4, former subd. (b)(1) & (2).)

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

HULL, J.

DUARTE, J.