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

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THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH KEITH MATTHEWS,

Defendant and Appellant.

C070316

(Super. Ct. No. 10F06839)

A jury convicted defendant Kenneth Keith Matthews of second degree burglary and found true allegations he personally used a handgun to commit the crime. The trial court sentenced him to 12 years in prison.

Defendant now challenges the trial court's imposition of a \$287.78 main jail booking fee, a \$59.23 main jail classification fee, and a \$10 crime prevention program fee, on the ground that there was no substantial evidence that he had the ability to pay those fees.

We conclude defendant forfeited his contention because he did not assert it in the trial court. We will affirm the judgment.

### BACKGROUND

The underlying facts regarding defendant's offense are not relevant to his contention on appeal and are not set forth. A jury convicted him of second degree burglary (Pen. Code, § 211)<sup>1</sup> and found true an allegation that he personally used a handgun to commit the crime (§ 12022.53, subd. (b)). The trial court sentenced defendant to the low term of two years in prison for the robbery, plus a consecutive 10 years in prison for the firearm enhancement, for an aggregate prison term of 12 years, and awarded 541 days of presentence credit.

In addition, the trial court orally ordered defendant to pay a \$2,000 restitution fine (§ 1202.4), a \$2,000 parole revocation fine suspended unless parole is revoked (§ 1202.45),<sup>2</sup> a \$10 crime prevention program fee (§ 1202.5), a \$287.78 main jail booking fee (Gov. Code, § 29550.2), and a \$59.23 main jail classification fee (Gov. Code, § 29550.2). The trial court then asked counsel if there was anything else that should be put on the record. Defendant's trial counsel replied, "No, your Honor." Defendant and his trial counsel did not raise any objection in the trial court to the imposition of the fees.

### DISCUSSION

Defendant contends the trial court erred in imposing the main jail booking fee, main jail classification fee and crime prevention program fee, because there was insufficient evidence of his ability to pay those fees. This court and other courts,

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

<sup>2</sup> The abstract of judgment incorrectly indicates a \$2,400 restitution fine pursuant to section "1202.4/1202.45." We will order the trial court to correct the abstract of judgment.

however, have held that such a contention is forfeited if defendant fails to object in the trial court. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371; *People v. Robinson* (2002) 104 Cal.App.4th 902, 903-906; *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357; *People v. McMahan* (1992) 3 Cal.App.4th 740, 749-750.)

Nonetheless, defendant attempts to distinguish this court's opinion in *People v. Crittle, supra*, 154 Cal.App.4th 368, arguing that here he claims insufficiency of the evidence, which is of "constitutional dimension and is not forfeited by the lack of objection in the trial court." He also relies on *People v. Pacheco* (2010) 187 Cal.App.4th 1392, in which the Court of Appeal for the Sixth District held that the issue of ability to pay attorney fees could be raised for the first time on appeal if "based on the insufficiency of the evidence to support the order or judgment." (*Id.* at p. 1397.)

But in *People v. Crittle, supra*, 154 Cal.App.4th 368, this court held that by failing to object in the trial court, the defendant forfeited both (a) his claim that the trial court did not make a finding of his ability to pay, and (b) his claim that "nothing in the record shows he had the ability to pay," an insufficiency of the evidence contention. (*People v. Crittle, supra*, 154 Cal.App.4th at p. 371.) We cited *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468, in which this court concluded that a defendant had forfeited the issue of his ability to pay a restitution fine when he failed to raise any objection on this basis at the time the fine was imposed. In so holding, we noted: "[B]ecause the appropriateness of a restitution fine is fact-specific, as a matter of fairness to the People, a defendant should not be permitted to contest for the first time on appeal the sufficiency of the record to support his ability to pay the fine. . . . [Citations.] A challenge to the sufficiency of evidence to support the imposition of a restitution fine to which defendant did not object is not akin to a challenge to the sufficiency of evidence to support a conviction, to which defendant necessarily objected by entering a plea of not guilty and contesting the issue at trial." (*Id.* at pp. 1468-1469.)

As we noted in *People v. Gibson, supra*, 27 Cal.App.4th at page 1468: “The rule that contentions not raised in the trial court will not be considered on appeal is founded on considerations of fairness to the court and opposing party, and on the practical need for an orderly and efficient administration of the law. [Citations.]” The reasoning in *Gibson* remains persuasive.<sup>3</sup>

Accordingly, we conclude defendant forfeited this contention.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect the oral imposition of a \$2,000 restitution fine (§ 1202.4) and a \$2,000 parole revocation fine suspended unless parole is revoked (§ 1202.45). The trial court shall forward a certified copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

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MAURO, J.

We concur:

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BLEASE, Acting P. J.

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HULL, J.

<sup>3</sup> The California Supreme Court granted review in a case raising the same issue. (*People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513 [challenge to sufficiency of evidence to support jail booking fee forfeited by failure to object].) Until the Supreme Court issues further guidance, we continue to adhere to this court’s holding that a failure to object to a fee or fine in the trial court forfeits the issue, even where the statute contemplates a judicial finding on ability to pay and the defendant challenges the sufficiency of the evidence to support such a finding.