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

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In re O. A., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

O. A.,

Defendant and Appellant.

C070847

(Super. Ct. No. 69040)

Following a contested jurisdiction hearing, the juvenile court found that the minor O. A. committed robbery and two counts of attempted robbery. At the disposition hearing, the juvenile court adjudged the minor a ward of the court, set a maximum term of confinement of six years four months, and placed the minor on probation with 120 days in juvenile hall. Among the probation conditions was that the minor pay a \$100 general fund fine.

On appeal, the minor contends there was insufficient evidence of the minor's ability to pay the general fund fine and its attendant penalty assessment. We affirm.

We dispense with the facts of the minor's offenses, as they are unnecessary to resolve this appeal.

When a minor is adjudged a ward of the juvenile court, the court may order the minor to pay a fine of up to \$250 to "the county treasury if the court finds the minor has the financial ability to pay the fine, or to participate in uncompensated work programs." (Welf. & Inst. Code, § 731, subd. (a)(1).)

This court has previously held that if a defendant does not object in the trial court to the imposition of a fee or fine, the issue is forfeited. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371 [crime prevention fine -- Pen. Code, § 1202.5, subd. (a)]; *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357 [jail booking fee -- Gov. Code, § 29550.2]; *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1467, 1468-1469 [restitution fine -- Gov. Code, former § 13967, subd. (a)].) We have applied the forfeiture rule even when the defendant claims on appeal that there is not sufficient evidence to support the imposition of the fine or fee. (*Gibson*, at pp. 1467-1469.)

The Sixth Appellate District, however, has concluded that appeals challenging the imposition of fines and fees based on claims of insufficient evidence "do not require assertion in the court below to be preserved on appeal." (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397, citing *People v. Viray* (2005) 134 Cal.App.4th 1186, 1217.) This holding created a conflict between *Pacheco* and the cases cited above. The California Supreme Court has agreed to resolve the conflict. (See *People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513, will be argued on Feb. 6, 2013.)

Until the California Supreme Court issues further guidance, we continue to adhere to our holding in *People v. Gibson*, *supra*, 27 Cal.App.4th at page 1466, 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 of ability to pay and the defendant challenges the sufficiency of the evidence to support such a finding. (*Id.* at pp. 1467, 1468-1469.) "As

a matter of fairness to the trial court, a defendant should not be permitted to assert for the first time on appeal a procedural defect in imposition of a restitution fine, i.e., the trial court's alleged failure to consider defendant's ability to pay the fine. [Citation.] Rather, a defendant must make a timely objection in the trial court in order to give that court an opportunity to correct the error; failure to object should preclude reversal of the order on appeal. [Citations.]" (*Id.* at p. 1468.)

Accordingly, we conclude that the minor's failure to object to the general fund fine forfeits his contentions regarding the fine and its attendant assessment.

DISPOSITION

The judgment is affirmed.

          ROBIE          , Acting P. J.

We concur:

          BUTZ          , J.

          DUARTE          , J.