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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER BO SANCHEZ,

Defendant and Appellant.

C070990

(Super. Ct. Nos. 12F466,
12F131, 11F6248)

Defendant Alexander Bo Sanchez entered a plea of no contest to assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1); undesignated section references that follow are to this code) in case No. 12F466, receiving stolen property (§ 496, subd. (a)) in case No. 12F131, and second degree burglary (§ 459) in case No. 11F6248 and admitted that he committed the offense in case No. 12F466 while released from jail on his own recognizance (§ 12022.1). Defendant entered his plea in exchange for a sentencing bid of five years four months in state prison and the dismissal of the remaining counts and allegations.

The court sentenced defendant to state prison for five years four months.

Defendant appeals. He contends the trial court erroneously imposed a \$10 crime prevention fine (§ 1202.5) and assessments without a finding of his ability to pay. He also claims any ability-to-pay finding is not supported by sufficient evidence. We conclude that defendant's claims are forfeited because he never objected in the trial court.

DISCUSSION

We need not recount the facts underlying defendant's offenses because they are not relevant to the issue raised on appeal. The probation report recommended a \$10 crime prevention fine plus \$28 in assessments (item No. 5). The probation report also indicated that defendant "is homeless and has no appropriate family willing to continue assisting him. He is uneducated and has no work experience. He has significant substance abuse issues and a history of non-compliance with juvenile probation and CFS."

Section 1202.5 provides for a \$10 crime prevention fine "[i]n any case in which a defendant is convicted of any of the offenses enumerated in Section . . . 459" Here, defendant was convicted of second degree burglary, a violation of section 459. Section 1202.5 further provides: "If the court determines that the defendant has the ability to pay all or part of the fine, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution."

At sentencing, the court imposed the five-year-four-month prison sentence, a \$1,200 restitution fine, a \$1,200 parole revocation restitution fine, and a \$120 court security fee. In response to the court's inquiry, defense counsel agreed to "[w]aive full and complete reading of Number 4 [a \$90 criminal conviction fee] and Number 5 [the

\$10 crime prevention fine and assessments].” The court then imposed those two items “as set forth in the sentencing report.” The court also imposed \$867 in victim restitution for one victim, reserving jurisdiction with respect to victim restitution for the other victims. Defense counsel did not object to the fees and fines.

Forfeiture applies “to claims involving the trial court’s failure to properly make or articulate its discretionary sentencing choices.” (*People v. Scott* (1994) 9 Cal.4th 331, 353.) *People v. Crittle* (2007) 154 Cal.App.4th 368 at page 371 holds that claims identical to the ones defendant raises here are forfeited in the absence of a timely objection at trial. In his opening brief, defendant does not cite *Crittle*, relying instead on cases which do not involve a challenge to a crime prevention fine (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397-1401 [attorney fees, booking fee, and probation supervision fees]; *People v. Viray* (2005) 134 Cal.App.4th 1186, 1213-1218 [attorney fees]; *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1536-1537 [same]; *People v. Phillips* (1994) 25 Cal.App.4th 62, 67-76 [attorney fees and probation costs]; *People v. Nilsen* (1988) 199 Cal.App.3d 344, 346 [attorney fees]). Defendant also notes that a similar issue involving a jail booking fee is currently pending before the California Supreme Court in *People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513. We will continue to follow our opinion in *Crittle*, as well as *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1467-1469 [restitution fine], until the California Supreme Court instructs otherwise, and conclude here that defendant’s claims are forfeited.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

BLEASE, Acting P. J.

MAURO, J.