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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALANN L. GREEN,

Defendant and Appellant.

D059702

(Super. Ct. No. SCN287366)

APPEAL from a judgment of the Superior Court of San Diego County,
Kimberlee A. Lagotta, Judge. Affirmed.

Alann Green was charged with two felony counts of burglary (Pen. Code, §459; counts 1, 2), one count of felony forgery (Pen. Code, §476; count 3) and one count of felony forgery of checks (Pen. Code, §470, subd. (d); count 4). He pleaded guilty to count 1, second degree burglary, and the remaining charges were dismissed. Green appeals, claiming the court erred when it imposed a \$154 booking fee in the order granting probation because the court failed to make a finding of his ability to pay and

there was insufficient evidence to support a finding of his ability to pay. We affirm the judgment.

FACTS

Green pleaded guilty to one count of burglary and admitted he "unlawfully entered a building (to wit a Check Cashing Center) with the intent to commit a theft" after his arrest on January 24, 2011. On that day, Green entered the Check Cashing Center in Escondido with two checks. One check had no name or header, was not signed, and was made out to Green in the amount of \$2,000. The other check belonged to Rafael and Guadalupe Curiel and was made out to Green in the amount of \$2,000. The cashier did not cash the first check because the account had been closed and the cashier called the police after Chase Bank confirmed the signatures did not match on the second check. A police officer contacted Guadalupe Curiel, Green's mother-in-law, and she stated neither she nor her husband would write a check to Green for any amount of money and she believed Green had stolen her checks. After officers arrested Green, they discovered three more checks without headers made out to Green in the amount of \$2,000 and credit cards belonging to other people.

DISCUSSION

Green contends the court erred when it imposed a \$154 booking fee in the order granting probation because the court failed to make a finding of his ability to pay and there was insufficient evidence to support a finding of his ability to pay.

When reviewing the sufficiency of evidence on appeal, we must determine whether substantial evidence supports the trier of fact's findings and we do not consider whether the evidence proves guilt beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.) We must review the entire record favorably to the judgment to determine whether there is substantial evidence that is reasonable, credible, and of solid value to allow a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. (*Id.* at p. 578.)

It is settled that the failure to object and make an offer of proof at the sentencing hearing, concerning alleged errors or omissions in the probation report, waives the claim on appeal and this rule generally applies to probation conditions under consideration at the same time. (*People v. Welch* (1993) 5 Cal.4th 228, 234-235.) Therefore, a criminal defendant cannot argue for the first time on appeal that the court ordered probation under unreasonable conditions, imposed a restitution fine following a guilty plea without proper advisements or aggravated a sentence based on items contained in a probation report that were erroneous or otherwise flawed. (*People v. Scott* (1994) 9 Cal.4th 331, 351.) This helps to discourage the imposition of invalid probation conditions and reduces the number of costly appeals brought on that basis. (*Welch, supra*, at p. 235.)

Here, the record indicates, Green made no objection at sentencing to the \$154 booking fee, a term of his probation, nor did he raise any concerns regarding his inability to pay the fee for us to consider in the record. The recommendations in the probation report were provided to the court and Green was informed of these recommendations,

including the \$154 booking fee, by the time of the sentencing hearing. Further, at the sentencing hearing, Green told the court he had read and understood the terms and conditions of his probation, but he did not object to the \$154 booking fee. Green's failure to object or provide an offer of proof at the sentencing hearing results in a waiver of the claim and Green cannot raise this contention for the first time on appeal. Therefore, because the claim has been forfeited, we will not address Green's ability to pay.¹

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

O'ROURKE, J.

¹ We also reject the Attorney General's contention that a certificate of probable cause, in accordance with Penal Code section 1237.5, was required for this appeal because nothing in the plea agreement addressed fines or fees.