

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ANTHONY FUENTEZ,

Defendant and Appellant.

D069062

(Super. Ct. No. FWV1302419)

APPEAL from a judgment of the Superior Court of San Bernardino County, Mary E. Fuller, Judge. Affirmed in part, reversed in part and remanded.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Kelley Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Richard Fuentez of the attempted murder of Mr. Medina (Pen. Code, §§ 664/187,¹ count 1) and assault with a semiautomatic firearm on Mr. Medina (§ 245, subd. (b), count 2), possession of a firearm by a felon (§ 29800, subd. (a), count 3), and assault with a semiautomatic firearm on Ms. Calvillo (§ 245, subd. (b), count 4). The jury found true that Fuentez personally used a firearm (§ 12022.53, subd. (b)) and personally and intentionally discharged a firearm (§ 12022.53, subd. (c)) in connection with count 1. The jury also found true that Fuentez personally used a firearm within the meaning of section 12022.5, subdivisions (a) and (d) in connection with counts 2 and 4 and that all of the crimes alleged in counts 1 through 4 were committed for the benefit of a criminal street gang within the meaning of section 186.22, subdivision (b). In a separate proceeding, Fuentez admitted he had three "prison priors" within the meaning of section 667.5, subdivision (b).

The court sentenced Fuentez to a total term of 49 years 4 months in state prison, composed of (1) nine years on count 1; (2) a consecutive 20-year term for the section 12022.53, subdivision (c), enhancement; (3) a consecutive 10-year term for the section 186.22, subdivision (b), enhancement appended to count 1; (4) a consecutive term of eight months on count 3 and a consecutive one-year term for the section 186.22, subdivision (b), enhancement appended to count 3; (4) a consecutive two-year term on count 4 and a consecutive three-year eight-month term for the section 186.22, subdivision (b), enhancement appended to count 4; (5) a consecutive 16-month term for the firearm

¹ All further statutory references are to the Penal Code unless otherwise noted.

enhancement appended to count 4; and (6) two consecutive one-year terms for two of his prison priors. The court ordered the term imposed for count 2 and its appended enhancements stayed under section 654.

The court also ordered Fuentez to pay \$65,958.99 to the Arrowhead Regional Medical Center, the hospital to which Mr. Medina was transported after he was wounded by Fuentez. The court also ordered Fuentez to pay \$750 to reimburse the county for the cost of his court appointed attorney. Fuentez timely appealed.

ANALYSIS²

A. The Conceded Contentions

Fuentez contends the abstract of judgment must be corrected because the court, when it orally pronounced the sentence, specified the term imposed on count 2 was imposed as a concurrent sentence but was to be stayed pursuant to section 654. However, the abstract of judgment merely reflects that Fuentez was sentenced to a concurrent unstayed term for count 2. The People concede, and we agree, the abstract of judgment must be amended to reflect that the term imposed on count 2 was stayed pursuant to section 654. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.)

Fuentez also contends the enhancements for use of a firearm appended to counts 2 and 4 must be stayed pursuant to section 1170.1, subdivision (f), under the holding of *People v. Rodriguez* (2009) 47 Cal.4th 501 and *People v. Le* (2015) 61 Cal.4th 416. The

² Because Fuentez makes no challenge on appeal to any of the convictions, and none of his contested appellate challenges related to the facts of the offenses that formed the basis for the jury's guilty verdicts or true findings, it is unnecessary to detail the evidence at trial.

People concede, and we agree, that *Rodriguez* controls and requires the enhancements for use of a firearm appended to counts 2 and 4 to be stayed pursuant to section 1170.1, subdivision (f).

B. The Restitution Order in Favor of Arrowhead Regional Medical Center Must Be Stricken

On appeal, Fuentez challenged the restitution order, made pursuant to section 1202.4 in favor of the Arrowhead Regional Medical Center in the amount of \$65,958.99, because it was unsupported by adequate evidence. In response to this court's request for supplemental briefing, the parties filed supplemental briefs in which they agree that this aspect of the sentence must be stricken because, under the analysis of *People v. Slattery* (2008) 167 Cal.App.4th 1091, the court did not have the authority under section 1202.4 to order restitution be paid to the medical provider that provided treatment to the direct victim of the criminal offenses. (*Slattery*, at pp. 1095-1097; *People v. Anderson* (2010) 50 Cal.4th 19, 30.) The restitution order, insofar as it directed payment to the Arrowhead Regional Medical Center, shall be stricken (*Slattery*, at p. 1098), and the matter remanded to the trial court to conduct new proceedings concerning the appropriate amount and recipient of restitution mandated by section 1202.4. (Cf. *Anderson*, at p. 28 [observing § 1202.4, providing for direct victim restitution, is mandatory].)

C. The Order Requiring Payment for Attorney Fees May Be Revisited on Remand

Fuentez challenges that portion of the sentencing order requiring him to "reimburse the county for the appointment of trial counsel in the amount of \$750" pursuant to the provisions of section 987.8, subdivision (b). He argues the court's failure

to make an express finding he had the "present ability to pay" that amount requires that portion of the order be stricken. He acknowledges that, under *People v. Aguilar* (2015) 60 Cal.4th 862, his counsel's failure to object to the absence of a finding on his "present ability to pay" that amount forfeits this challenge, but argues forfeiture should not apply because his counsel was ineffective in not raising this objection, considering the finding by the court that he did *not* have the ability to pay for the costs of the presentence investigation.

We conclude that, because it is necessary to remand this matter to the trial court to conduct further proceedings on the restitution order made pursuant to section 1202.4, the interests of judicial economy will be best served by having the court also revisit the order under section 987.8, subdivision (b), during those further proceedings, because reconsideration during those proceedings of the section 987.8 reimbursement order will obviate the potential for habeas proceedings asserting counsel was ineffective in not challenging the order for attorney fees under section 987.8, subdivision (b), based on Fuentez's alleged inability to pay those fees.

DISPOSITION

The judgment of convictions is affirmed. The sentence is vacated and the matter is remanded to the trial court with directions to order the enhancements for use of a firearm appended to counts 2 and 4 stayed pursuant to section 1170.1, subdivision (f). The court on remand shall also conduct new proceedings concerning the appropriate amount of direct victim restitution under section 1202.4 consistent with this opinion, and shall revisit the order for reimbursement under section 987.8, subdivision (b), consistent

with this opinion. The court shall also amend the abstract of judgment to reflect (1) that the enhancements appended to counts 2 and 4 are stayed pursuant to section 1170.1, subdivision (f), (2) the term imposed on count 2 is imposed as a concurrent sentence but is stayed pursuant to section 654, and (3) the new restitution orders entered under sections 1202.4 and 987.8, subdivision (b). In all other respects, the sentence is affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.