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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

CHRISTOPHER JAMES LEWIS,

Defendant and Respondent.

E055029

(Super.Ct.Nos. RIF123382 &
RIF130378)

OPINION

APPEAL from the Superior Court of Riverside County. Elaine M. Johnson,
Judge. Affirmed.

Paul E. Zellerbach, District Attorney, and Matt Reilly, Deputy District Attorney,
for Plaintiff and Appellant.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and
Respondent.

I

INTRODUCTION

The People appeal a judgment dismissing restitution fines imposed against defendant, Christopher James Lewis. The dismissal of the fines was in conjunction with the early termination of defendant's probation. The People argue that the trial court erred in dismissing the restitution fines. We conclude that the objection was not preserved on appeal by the prosecution, and even assuming the objection was preserved, the court did not abuse its discretion in dismissing the restitution fine.

II

FACTS AND PROCEDURAL BACKGROUND

On May 6, 2005, a felony complaint (case No. RIF123382) was filed against Christopher James Lewis, alleging that on or about May 4, 2005, he willfully and unlawfully possessed methamphetamine in violation of Health and Safety Code section 11377, subdivision (a). Defendant pled guilty to the charges, judgment was deferred pursuant to Penal Code section 1000 et. seq.¹ and defendant was referred to a diversion program.

On May 26, 2006, the People filed a second felony complaint (case No. RIF130378), charging defendant with possession of methamphetamine and violating probation. Defendant pled guilty to the charges and was sentenced to probation, conditional upon paying a \$200 restitution fine under section 1202.4, subdivision (b).

¹ Unless otherwise noted, all statutory references are to the Penal Code.

Diversion in case No. RIF123382 was terminated and defendant was placed on probation with similar terms, and conditions.

Subsequently, on August 29, 2007, the People filed another felony complaint under case No. RIF130378 and a petition alleging violation of probation under section 1203.2, subdivision (b), alleging that defendant had willfully and unlawfully possessed methamphetamine in violation of Health and Safety Code section 11377, subdivision (a), and had also violated the terms of probation in case Nos. RIF123382 and RIF130378. At the trial on October 3, 2007, defendant admitted to violating probation and was released to complete a Recovery Opportunity Center (ROC) program.

On April 12, 2010, defendant's probation officer filed a memorandum with the court alleging that defendant had violated probation by failing to comply with his ROC program. Defendant was returned to the custody of the Riverside County Sheriff. At the probation hearing on June 15, 2010, defendant admitted violating probation. Probation was continued on the same terms and conditions, but modified to include the term that defendant be committed to the custody of the Riverside County Sheriff for 365 days. The court recommended that defendant complete a Residential Substance Abuse Treatment (RSAT) program and continue his ROC program after successful completion of the RSAT program. Defendant accepted the proposed probation terms and conditions, including the RSAT program, and probation was continued until June 15, 2012.

Defendant completed the RSAT program on January 2, 2011, and continued in the ROC program.

During a probation hearing on September 14, 2011, the court found that defendant had completed the prescribed course of drug treatment imposed as a condition of probation. Defendant made an oral motion “under 1203 to dismiss all the fines and fees and dismiss the case pursuant to 1203 and contract.” In response, the prosecutor stated, “[s]ame objection as to the fines and fees.” The court suspended all fines imposed on defendant, including the restitution fines. Probation was terminated early, and the court granted defendant’s oral motion to set aside defendant’s plea of guilty and his conviction in both case Nos. RIF123382 and RIF130378.

The People appeal the dismissal of the unpaid \$200 restitution fine.

III

DISCUSSION

A. Issues on Appeal

The People assert that the court committed error when it dismissed the \$200 restitution fine upon defendant’s successful completion of probation. However, probation was not completed in this case. Rather, probation was terminated early. Thus, the issue on appeal is whether the court erred when it dismissed the restitution fine upon terminating probation early.

Defendant argues that the People’s objection was not preserved on appeal because the People failed to provide a complete record that showed the basis of the objection.

B. Objection Was Not Preserved on Appeal

During the hearing on September 14, 2011, defendant made “a motion under 1203 to dismiss all the fines and fees and dismiss the case pursuant to 1203 and contract.” The

prosecutor objected to all fines and fees being suspended, stating: “Same objection to the fines and fees.” The defendant argues that there is no indication in the record as to what fines and fees the prosecution was referring, and thus the People failed to provide a sufficient record that showed what its objections were to suspending the fines, and the issue cannot be reviewed by this court. We agree with defendant, and conclude that the objection was not preserved on appeal because the People failed to make a proper objection in the trial court.

The Supreme Court has addressed the issue of waiver in several cases, and concluded that the “waiver doctrine should apply 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.) Failure to object and “make an offer of proof at the sentencing hearing concerning alleged errors or omissions . . . waives the claim on appeal. [Citations.]” (*People v. Welch* (1993) 5 Cal.4th 228, 234.)

Although *Scott* and *Welch* involved criminal defendants appealing sentencing errors, the Supreme Court has held that there is no material difference when the party seeking to have the sentence modified on appeal is the People. (*People v. Tillman* (2000) 22 Cal.4th 300, 303.) In *Tillman*, the Supreme Court held that the failure to object to the trial court’s failure to impose restitution fines resulted in waiver of the issue and barred prosecution from raising the objection on appeal. (*Id.* at p. 300.) The Supreme Court reasoned that “[a]lthough the court is required to impose sentence in a lawful manner, counsel is charged with understanding, advocating and clarifying permissible sentencing choices at the hearing.” (*Id.* at p. 303.)

The People had an opportunity to object to the sentencing at the hearing, but failed to make a proper objection. The general objection raised by the prosecution “did nothing to give the trial court a meaningful opportunity to correct any sentencing errors.” (*People v. De Soto* (1997) 54 Cal.App.4th 1, 9.) It is the prosecution’s duty to provide “*specifically articulated* reasons for the objections” in an effort to avoid sentencing error. (*Ibid.*) The People failed to provide the specific grounds for the objection, and this failure precludes raising the issue on appeal.

C. Even If the Objection Was Not Waived, the Trial Court Was Within Its Discretion in Dismissing the Restitution Fines

Even assuming the People did not waive its objection to dismissal of the \$200 restitution fine, the objection lacks merit. We recognize that a restitution fine normally survives the probationary term and is enforceable despite the successful completion of probation. (*People v. Chambers* (1998) 65 Cal.App.4th 819; *People v. Arata* (2004) 118 Cal.App.4th 195.) However, in this case, defendant did not complete probation. Defendant successfully completed the ROC program and probation was terminated early by the court as a result. Thus the cases and statutes relied on by the People do not control here.

Section 1203.4, subdivision (a)(1) allows a defendant “at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his plea of guilty . . . [and] the court shall thereupon dismiss the accusations or information against the defendant.” Defendant falls squarely

into the category enumerated by this statute, and the trial court's grant of the motion was within the court's discretion.

Section 1202.4, subdivision (b) requires the trial court to impose restitution fines "[i]n every case where a person is convicted of a crime" unless the court finds compelling and extraordinary reasons for not doing so. Defendant's section 1203.4 motion to withdraw his plea of guilty was granted. Thus he was no longer convicted of a crime as required for section 1202.4, subdivision (b) to apply.

The People argue that under section 1202.4, subdivision (m), defendant's restitution fine could not be dismissed because "[i]n every case in which the defendant is granted probation, the court shall make the payment of restitution fines . . . a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied." (§ 1202.4, subd. (m).) The instant case is distinguishable from cases dealing with this statute, where probation is revoked and the defendant is sentenced to prison. (See *People v. Chambers, supra*, 65 Cal.App.4th 819 [holding that a restitution fine imposed at the time probation is granted survives the revocation of probation]; *People v. Arata, supra*, 118 Cal.App.4th 195 [holding that restitution fines remain in force despite the revocation of probation]; *People v. Kleinman* (2004) 123 Cal.App.4th 1476 [again finding that restitution fines survive the revocation of probation].) The court in *Arata* held that "subdivision (m) is no more than a direction to the trial judge to impose the restitution fine mandated by [section 1202.4,] subdivision (b) on probationers as a condition of probation." (*Arata*, at p. 203.) Here, probation was

not revoked. Instead, probation was terminated early at the discretion of the court because defendant successfully completed his ROC program. The trial court had the discretion to terminate probation early and also had the discretion to dismiss the \$200 restitution fine. We conclude the trial court acted within its discretion in dismissing the \$200 fine.

IV

DISPOSITION

The judgment is affirmed.

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CODRINGTON

J.

We concur:

McKINSTER

Acting P. J.

MILLER

J.