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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS BRISENO,

Defendant and Appellant.

E055280

(Super.Ct.No. FCH1000107)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown, Judge. Affirmed as modified.

James Kehoe, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, 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 found defendant and appellant Carlos Briseno guilty of attempted voluntary manslaughter (Pen. Code, §§ 664, 192, subd. (a), count 1);¹ assault with a deadly weapon (§ 245, subd. (a)(1), count 2); and infliction of corporal injury to a spouse or cohabitant (§ 273.5, subd. (a), count 3). The jury also found true that in the commission of counts 2 and 3, defendant personally inflicted great bodily injury on the victim. (§ 12022.7, subd. (a).) Defendant was sentenced to a total term of six years in state prison with credit for time served. On appeal, defendant contends the trial court erred in ordering him to pay \$500 for reimbursement of appointed counsel fees because he was not provided with a hearing, and there was insufficient evidence to support the court's implied finding that he had the ability to pay the \$500 fee. (§ 987.8.) The People agree that this court should strike the order assessing the fee. We find that the order imposing the appointed counsel fee should be stricken from the judgment.

DISCUSSION²

Defendant contends there was insufficient notice, hearing, or findings to support the imposition of a \$500 appointed counsel fee. The People agree with defendant.

An assessment of attorney fees against a criminal defendant involves the taking of property, triggering constitutional concerns. Due process, therefore, requires that the

¹ All future statutory references are to the Penal Code unless otherwise stated.

² The details of defendant's criminal conduct are not relevant to the limited legal issue he raises in this appeal. Those details are set out in defendant's opening brief, and we will not recount them here. Instead, we will recount only those facts and procedures that are pertinent to the issue we must resolve in this appeal.

defendant be afforded notice and a hearing before such a taking occurs. (*People v. Amor* (1974) 12 Cal.3d 20, 29-30; *People v. Phillips* (1994) 25 Cal.App.4th 62, 72.)

Section 987.8 sets forth the statutory procedure for ascertaining a criminal defendant's ability to repay the county for the cost of services rendered by court-appointed counsel. "Subdivision (b) of section 987.8 . . . provides that, upon the conclusion of criminal proceedings in the trial court, the court may, after giving the defendant notice and a hearing, make a determination of his present ability to pay all or a portion of the cost of the legal assistance provided him." (*People v. Flores* (2003) 30 Cal.4th 1059, 1061.) Under the statute, there is a presumption that a defendant sentenced to prison does not have the ability to reimburse appointed counsel costs. (*Id.* at p. 1068.) Subdivision (g)(2)(B) of section 987.8 provides in pertinent part: "Unless the court finds unusual circumstances, a defendant sentenced to state prison shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense." (See also *Flores*, at p. 1068.)

Here, defendant was sentenced to state prison for six years. The trial court did not make an express finding of unusual circumstances. And nothing in the record shows unusual circumstances that, as a prisoner, defendant will be able to reimburse any costs of his defense. The probation report shows that at the time of defendant's arrest, he had been earning \$12.50 an hour, working 40 hours a week. However, he had \$18,000 in credit card debt, \$500 a month in child support, and no assets. In the interests of judicial economy, the People suggest the order be stricken rather than remanding the case for an

appropriate hearing and determination. We accept the concession and strike the order requiring defendant to reimburse the county for the \$500 court-appointed attorney fee.

DISPOSITION

The judgment is modified to strike the order imposing a \$500 fee for court-appointed counsel. (§ 987.8.) The trial court is directed to amend the abstract of judgment and its minute order of the sentencing hearing so as to delete this provision and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. (§§ 1213, 1216.) In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.