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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.

MITCHELL DAVID CLAY,

Defendant and Appellant.

E056618

(Super.Ct.No. FVI1100249)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jules E. Fleuret, Judge. Affirmed as modified.

Sylvia Whatley Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance by Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Mitchell David Clay pled no contest to misdemeanor assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).) In exchange, the remaining allegation was dismissed, and defendant was

sentenced to 365 days with credit for time served of 365 days. Following a restitution hearing, defendant was ordered to pay victim restitution in the amount of \$4,961.40, plus a 10 percent collection fee. Defendant appeals from the judgment, challenging the sentence or other matters occurring after the plea. We will affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

On January 25, 2011, defendant hit his neighbor in the face with a pipe because he believed the neighbor was dumping trash in the desert near their residence. After defendant left, the victim drove himself to a hospital where he received seven stitches near his left eye.

On February 24, 2011, following a preliminary hearing, an information was filed charging defendant with felony assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).) The information further alleged that defendant had inflicted great bodily injury upon the victim. (Pen. Code, § 12022.8.)

On May 18, 2012, the trial court granted the People's oral motion to reduce the charge to a misdemeanor. (Pen. Code, § 17, subd. (b).) Pursuant to a plea agreement, defendant thereafter pled no contest to misdemeanor assault with a deadly weapon in exchange for a sentence of 365 days with credit for time served and the dismissal of the enhancement allegation. The parties also stipulated that the trial court would retain jurisdiction to impose victim restitution pursuant to Penal Code section 1202.46 at a later

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<sup>1</sup> The factual background is taken from the police reports.

date. The trial court found that the plea was entered into freely and voluntarily, and that defendant knowingly and intelligently waived his rights.

The restitution hearing was held on June 22, 2012. At that time, defense counsel objected on the grounds that the trial court had lost jurisdiction to order restitution and collect the amount because it was a terminal disposition, and defendant had completed service of the sentence. The trial court overruled the objection, finding that the court had jurisdiction “based on the statutory requirement that restitution be ordered and the agreement between the parties.” The trial court thereafter ordered defendant to pay victim restitution in the amount of \$4,961.40 plus a 10 percent collection fee.

On June 25, 2012, defendant filed a notice of appeal, challenging the sentence or other matters occurring after the plea.

#### DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts, potential arguable issues, and requesting this court conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

However, we note that the May 18, 2012 plea hearing minute order should be corrected to note that defendant pled “[n]o contest” rather than guilty.

We also note that the trial court erred in calculating defendant's restitution amount. The trial court stated: "I will order restitution in the amount of \$4,961.40 plus the 10 percent collection fee for a total of \$5,010.40." However, the total should be \$5,457.54 (\$4,961.40 plus \$496.14). The June 22, 2012 restitution hearing minute order should therefore be amended accordingly.

DISPOSITION

The superior court clerk is directed to amend both the June 22, 2012 restitution hearing minute order and the May 18, 2012 plea hearing minute order in accordance with this opinion. In all other respects, the judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

RICHLI  
J.

KING  
J.