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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS SOTO,

Defendant and Appellant.

G045972

(Super. Ct. No. 11NF0329)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nicholas S. Thompson, Judge. Affirmed.

Julie Sullwold, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

We appointed counsel to represent Carlos Soto on appeal. Counsel filed a brief that set forth the facts of the case. Counsel did not argue against her client but advised the court no issues were found to argue on his behalf. Soto was given 30 days to file written argument on his own behalf. That period has passed, and we have received no communication from him.

Pursuant to *Anders v. California* (1967) 386 U.S. 738, to assist the court in conducting its independent review counsel provided the court with information as to issues that might arguably support an appeal. Counsel listed as possible but not arguable issues: (1) whether the trial court abused its discretion in denying Soto's *Marsden*¹ motion; (2) whether the court erred in reserving jurisdiction over the issue of victim restitution; (3) whether there was a proper waiver of Soto's right to appeal in the guilty plea; (4) whether presentence custody credits and fees were properly imposed; and (5) whether the court erred in imposing restitution fines when it did not advise Soto of the fines as consequences of his plea, but did advise him it was reserving jurisdiction over restitution.

We have reviewed the information provided by counsel and have independently examined the record. We found no arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We affirm the judgment.

FACTS

A felony complaint charged Soto with two counts of committing a lewd act upon a child under the age of 14 in violation of Penal Code section 288, subdivision (a)² (counts 1 and 2), and five counts of forcible rape in violation of section 261, subdivision (a)(2) (counts 3-7). Soto initially appeared in court on January 27, 2011. Soto faced a maximum sentence of 56 years. Over the next eight months the case was continued several times both for disposition and a preliminary hearing. On September 26, 2011, the case was again set for preliminary hearing. On this date, the court conducted a *Marsden* hearing at Soto's request. After hearing Soto's concerns, the court denied the motion. Later that day, based on an indicated sentence of 18 years, Soto

¹ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

² All further statutory references are to the Penal Code, unless otherwise indicated.

waived his rights and pled guilty to all counts. The matter was continued for sentencing at Soto's request.

On the day the trial court took the guilty pleas, it noted the victim would need counseling and therapy to learn how to cope with what she had been through. At the sentencing hearing, the court sentenced Soto to a total prison term of 18 years and awarded him 314 days of presentence custody credit pursuant to section 2933.1. The court imposed a restitution fine of \$200.00 pursuant to section 1202.4, subdivision (b), and a parole revocation restitution fine pursuant to section 1202.45. The court also imposed a court security fee of \$40 pursuant to section 1465.8 and a criminal conviction assessment of \$30 pursuant to Government Code section 70373, subdivision (a)(1). The court reserved jurisdiction over the issue of victim restitution.

DISCUSSION

We will address each of the issues counsel identified seriatim.

Did the trial court abuse its discretion in denying Soto's Marsden motion?

“When a defendant seeks substitution of appointed counsel pursuant to . . . *Marsden, supra*, 2 Cal.3d 118, ‘the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of inadequate performance. A defendant is entitled to relief if the record clearly shows that the appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.’ [Citations.]” (*People v. Taylor* (2010) 48 Cal.4th 574, 599.) “A trial court should grant a defendant's *Marsden* motion only when the defendant has made ‘a substantial showing that failure to order substitution is likely to result in constitutionally inadequate representation.’” (*People v. Hines* (1997) 15 Cal.4th 997, 1025.) “We review the denial of a *Marsden* motion for abuse of discretion.” (*People v. Taylor* (2010) 48 Cal.4th 574, 599.) After reviewing the sealed transcript of the *Marsden* proceedings, we find no abuse of discretion.

Did the trial court err in reserving jurisdiction over the issue of victim restitution?

A trial court must order restitution where there is economic loss, but, where the amount is indefinite at the time of sentencing, the trial court's order is not an enforceable restitution order. The court may reserve jurisdiction as to the amount and subsequently enter an enforceable order specifying the restitution amount. (*People v. Guardado* (1995) 40 Cal.App.4th 757, 763.) Thus, the court did not err.

Was there a proper waiver of Soto's right to appeal in the guilty plea?

The guilty plea form Soto signed read in part: "Appeal Waiver: I understand I have the right to appeal from decisions and orders of the Superior Court. I waive and give up my right to appeal from any and all decisions and orders made in my case, including motions to suppress evidence brought pursuant to . . . section 1538.5. I waive and give up my right to appeal from my guilty plea. I waive and give up my right to appeal any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement." Prior to accepting Soto's plea, the court asked Soto if the interpreter had translated the guilty plea form from English into Spanish for him. Soto stated it had been so translated. At the end of the guilty plea form, a certified Spanish language interpreter declared he had translated the contents of the form for Soto and that Soto had told him he understood the form's contents. The court also inquired if Soto had discussed each one of the paragraphs in the guilty plea form with his attorney. Soto stated he had.

For a waiver of the right to appeal to be valid, it is not necessary for the court to orally admonish the defendant about the right of appeal. Rather, we look to the record as a whole to determine whether a waiver of appeal was voluntary, knowing, and intelligent. (*People v. Panizzon* (1996) 13 Cal.4th 68, 80-83.) A waiver of the right to appeal is valid provided that "the record shows that the waiver was free, knowing and intelligent" (*People v. Charles* (1985) 171 Cal.App.3d 552, 563.) We find the waiver of the right of appeal valid.

Were presentence custody credits and fines/fees properly imposed?

In his guilty plea form, Soto acknowledged he had served 273 actual days in custody and was entitled to 41 days of good time/work time for a total of 314 days. Section 2933.1, subdivision (a), provides: “Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of [s]ection 667.5 shall accrue no more than 15 percent of worktime credit, as defined in [s]ection 2933.” The trial court properly calculated presentence credits and properly imposed the statutorily required fines and fees.

Did the trial court err in imposing restitution under sections 1202.4 and 1202.45 when it did not advise Soto of the fines as consequences of his plea, but did advise him it was reserving jurisdiction over restitution?

The guilty plea form advised Soto the court would order him to pay a mandatory state restitution fine and a second fine if he was subject to parole. The form also advised him that he would only have to pay the second fine if he violated the terms of his parole. No further advisement was necessary. We discern no error.

DISPOSITION

The judgment is affirmed.

O’LEARY, P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.