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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.

DAVE DAE HONG KIM,

Defendant and Appellant.

G047162

(Super. Ct. No. 08NF1399)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
W. Michael Hayes, Judge. Affirmed.

Robert L.S. Angres, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Defendant Dave Dae Hong Kim appeals from the June 15, 2012, postjudgment order directing him to pay restitution on behalf of victim Jack Stotts, Jr., totaling \$9,153.42. (See Pen. Code, § 1202.4; all statutory citations are to the Penal Code, unless noted otherwise.) We appointed counsel to represent Kim. Counsel filed a brief setting forth a statement of the case, but advised this court he found no issues to support an appeal. We provided Kim 30 days to file his own written argument, and he has responded with a supplemental brief filed January 22, 2013. After conducting an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTS

We presented the facts and procedural history of this case in our earlier opinion affirming Kim's convictions. (*People v. Kim* (Sept. 20, 2010, G042216) [nonpub. opn.].) Suffice it to say a jury convicted Kim of premeditated attempted murder and other crimes for his role in a gang assault on Jack Stotts, Jr., and Stotts's friends at a Fullerton park in March 2008. At sentencing, the trial court reserved jurisdiction to award restitution to Stotts.

In November 2011, the Orange County District Attorney filed a motion seeking \$9,153.42 in restitution for benefits the Victim Compensation and Government Claims Board (VCGCB) paid on Stotts's behalf. Records reflected the VCGCB paid \$8,479.23 for Stotts's medical bills, and \$674.19 for lost income. The trial court conducted a hearing on the motion on June 15, 2012. Kim attended, represented by counsel. The court admitted into evidence, without defense objection, certified documents submitted by the prosecution, including the VCGCB's request for restitution and supporting invoices. Counsel objected restitution would be a financial burden on his client because "he only makes five or \$10 a month" working in prison. The trial court noted ability to pay was not a factor in awarding victim restitution, and ordered restitution as requested.

Potential Issues

Kim's appellate lawyer identifies one potential issue for our consideration: Does substantial evidence support the restitution award? Kim filed a supplemental brief challenging the sufficiency of evidence to support the award, and claims he does not have the ability to pay the award.

Victim Restitution – Substantial Evidence and Ability to Pay

Section 1202.4 provides in relevant part, "(a)(1) It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime." Subdivision (f) of section 1202.4 provides, "Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record."

Restitution is available for economic loss suffered by the victim, which includes medical expenses and wages lost due to injury incurred by the victim. (§ 1202.4, subd. (f)(3)(B), (D).) To the extent the victim has received assistance from the Victim Compensation Program (see Gov. Code, § 13950), the restitution is deposited into the Restitution Fund. (§ 1202.4, subd. (f)(2).)

Where the Restitution Fund provides assistance to or on behalf of a victim, "the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered. [¶] (B) The amount of assistance provided by the Restitution Fund shall be

established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid by the board and whether the services for which payment was made were for medical . . . expenses [etc]. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.” (§ 1202.4, subd. (f)(4)(A)-(B).)

Finally, “[t]he court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. *A defendant’s inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.*” (§ 1202.4, subd. (g), italics added.)

Here, the prosecution presented certified records from the VCGCB establishing it paid \$9,153.42 on Stotts’s behalf for medical bills and loss of income. Kim did not offer evidence rebutting the claim. A factual and rational basis supports the amount of restitution ordered by the trial court. (See *People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1320; [no abuse of discretion where reviewing court finds a factual and rational basis for the amount of restitution ordered by the trial court]; *People v. Harvest* (2000) 84 Cal.App.4th 641, 653 [“trial court is required to use ‘a rational method’ in computing restitution”].)

In his supplemental brief, Kim contends the probation officer “recommended [he] pay restitution in [the] amount of \$5,600 to the victim.” Kim is mistaken. The probation officer recommended a *restitution fine* (§ 1202.4, subd. (b)(1)) of \$5,600. In fact, the trial court imposed the minimum restitution fine of \$200.

Kim also complains at the time of the crimes he was an indigent juvenile with no employment history, the only money he receives is from his family and by working in the prison laundry at 13 cents an hour, or about \$3 in the month of December

2012, the restitution order may take up to 55 percent of his earnings, and he uses his money for personal hygiene supplies purchased from the prison canteen. As noted above, the trial court was required to order full restitution, and Kim's inability to pay was not a consideration in determining the amount of the restitution order. (§ 1202.4, subd. (g).)

After conducting an independent review of the record, we discern no arguable issues.

DISPOSITION

The postjudgment order is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.