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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DOUGLAS REULMAN,

Defendant and Appellant.

H036443

(Santa Clara County

Super. Ct. No. CC955510)

A jury found defendant Michael Douglas Reulman guilty of misdemeanor assault (Pen. Code, §§ 240, 241, subd. (a)).¹ The trial court suspended imposition of sentence, placed defendant on probation for three years, and ordered various fines and fees. On appeal, defendant challenges the imposition of the monthly probation supervision fee of \$110 (§ 1203.1b) and the criminal justice administration fee of \$259.50 (Gov. Code, § 29550 et seq.). We reverse and remand the matter to the trial court for a determination of defendant's ability to pay these fees.

I. Statement of Facts

Defendant hit his brother-in-law with a pipe. The victim received a bump above his eye, a scratch on his neck, and a cut on his upper arm that required stitches.

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

II. Discussion

Defendant contends that trial court erred in imposing the monthly probation supervision fee of \$110 and the criminal justice administration fee of \$259.50 because it did not determine his ability to pay these fees. He also contends that there is insufficient evidence to support any implied finding of ability to pay, and his failure to object to the imposition of these fees does not forfeit the issue.

At the sentencing hearing, the trial court imposed a restitution fine of \$100 (former § 1202.4, subd. (b)) and, in the event probation was revoked, a probation revocation restitution fine of \$100 (§ 1202.44), a domestic violence fee of \$400 (§ 1203.097, subd. (a)(5)), a fee of \$100 to a battered women's shelter (§ 1203.097, subd. (a)(11)(A)), a court security fee of \$30 (former § 1465.8), a criminal conviction assessment of \$30 (Gov. Code, § 70373), a criminal justice administration fee of \$259.50 (Gov. Code, § 29550, subd. (c)), and a monthly probation supervision fee of \$110 (§ 1203.1b). The trial court also ordered defendant to complete a certified domestic violence program (§ 1203.097, subd. (a)(6)) and pay all fees for that program. There is nothing in the record indicating the amount of the program fees. However, the trial court stated that participation in the domestic violence program would impose "a substantial financial obligation" on defendant, and thus it was "very important" for defendant to remain employed. Accordingly, the trial court did not impose an additional jail sentence. Defendant did not object to the imposition of fees.

People v. Pacheco (2010) 187 Cal.App.4th 1392 (*Pacheco*) is instructive. In *Pacheco*, this court held that an objection is not required to preserve a claim of insufficient evidence to support an ability to pay finding as required by section 1203.1b and Government Code section 29550. (*Pacheco*, at p. 1397.)² *Pacheco* also set forth the

² The issue of whether a defendant's failure to object at the sentencing hearing forfeits a claim that he or she was unable to pay a criminal justice administration fee

requirements of section 1203.1b, that is, “the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision The probation officer shall inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant’s ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver.’ (§ 1203.1b, subd. (a).)” (*Pacheco*, at pp. 1400-1401.) When the defendant does not waive this right, “the probation officer shall refer the matter to the court for the scheduling of a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the report of the probation officer” (*Pacheco*, at p. 1401.)

Here, as in *Pacheco*, there is no evidence that either the probation officer or the trial court made a determination of defendant’s ability to pay the monthly probation supervision fees. Nor is there any evidence that defendant was advised of his right to have the court make this determination or that he waived this right.

The Attorney General argues, however, that the finding of ability to pay may be implied from the circumstances. She notes that both fees were mentioned in the probation report, and since both required an ability to pay finding this court can presume the trial court performed its official duty to make this finding. (Evid. Code, § 664.) While it is true that the trial court’s finding of the defendant’s ability to pay may be

(Gov. Code, § 29550.2) is pending before the California Supreme Court in *People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513.

implied, this finding must be supported by substantial evidence. (*Pacheco, supra*, 187 Cal.App.4th at p. 1398.)

Here, there is insufficient evidence of defendant's ability to pay the monthly probation supervision fee. Defendant is 25 years old and has two young children. He is employed as a crew foreman by the family's landscape business. However, defendant's arm was severely injured four years ago, and despite three surgeries, he is unable to perform all aspects of his job. More importantly, there is no evidence of his income or assets. Though the trial court acknowledged the "substantial financial obligation" imposed by his participation in the domestic violence program, there is also no evidence of the amount of these fees or of his other expenses. Since there is insufficient evidence of defendant's financial position, the matter must be reversed.

Pacheco, supra, 187 Cal.App.4th 1392 also considered the defendant's ability to pay the criminal justice administration or booking fee. In that case, the trial court did not specify the statutory basis of the fee, but this court concluded that the basis was either Government Code section 29550, subdivision (c) or Government Code section 29550.2 since the county was identified as the payee. (*Pacheco*, at p. 1399.) *Pacheco* held that "a prerequisite to the imposition of a booking fee, whether under Government Code section 29550, subdivision (c) or Government Code section 29550.2, is a finding, whether express or implied, of the defendant's ability to pay. Such a finding must be supported by substantial evidence. Further, a booking fee must not exceed the actual administrative costs of booking, as further defined in the relevant statutes." (*Pacheco*, at p. 1400.) Since there was no evidence of the defendant's ability to pay the fee or of the actual administrative costs of the booking, this court remanded the matter to the trial court for further findings. (*Pacheco*, at pp. 1400, 1403-1404.) Similarly, here, there is no evidence of either defendant's ability to pay the fee or the actual administrative costs of booking.

III. Disposition

The order is reversed. The matter is remanded with directions to the trial court to determine, in accordance with the applicable statutes, defendant's ability to pay the monthly probation supervision fee of \$110 and the criminal justice administration fee of \$259.50 before imposing them.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Elia, J.