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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

REGINALD LAMONT ELLIS,

Defendant and Appellant.

H037112

(Santa Clara County

Super. Ct. No. BB944184)

Defendant Reginald Lamont Ellis pleaded no contest to one count of attempted murder (Pen. Code, §§ 187, 664) and one count of dissuading a witness (*id.* § 136.1) and admitted that he had personally used a deadly weapon in commission of the attempted murder (*id.* § 12022, subd. (b)(1)). He was sentenced to prison for 11 years and ordered to pay, among other things, a booking fee of \$129.75 pursuant to Government Code section 29550.1.¹ Defendant argues that section 29550.1 violates his right to equal protection of the law (U.S. Const., 14th Amend.; Cal. Const. art. I, § 7) because it does not require the court to first find that he has the ability to pay the fee. Defendant also contends that there is no evidence that he had the ability to pay.

We need not reach the evidentiary argument because section 29550.1 does not require an ability-to-pay finding, the absence of such a requirement does not present an

¹ Further undesignated section references are to the Government Code.

equal protection problem, and, in any event, defendant affirmatively waived an ability-to-pay hearing. Accordingly, we shall affirm.

I. BACKGROUND

Defendant was accused of attempting to kill his girlfriend. The Mountain View Police Department took him into custody and booked him into jail. He was charged with multiple counts related to the murder attempt. Defendant pleaded no contest to the counts described above and the remaining counts and allegations were dismissed or stricken. At sentencing, the trial court imposed the booking fee pursuant to section 29550.1, payable to the City of Mountain View.

II. DISCUSSION

Section 29550.1 is one of three code sections intended to defray the administrative cost of operating the jails. (§§ 29550, 29550.1, 29550.2.) These sections authorize collection of a criminal justice administration fee, commonly known as a booking fee, from arrestees who are ultimately convicted. Sections 29550 and 29550.2 expressly require a finding that the person has the ability to pay the fee. Section 29550.1 does not. The difference, defendant maintains, is a violation of his right to equal protection.

To succeed on an equal protection claim, a defendant must first show that the law treats two or more similarly situated groups in an unequal manner. (*People v. Wilkinson* (2004) 33 Cal.4th 821, 836-837.) Unless the disparate treatment involves suspect classifications or touches upon fundamental interests, most equal protection challenges are tested under the rational relationship test. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1200.) Under the rational relationship test, a classification that treats similarly situated persons differently is not an equal protection violation if “ ‘ ‘ ‘there is any reasonably conceivable state of facts that could provide a rational basis for the classification.’ ” ’ ’ ’ (Id. at pp. 1200-1201, italics removed.)

In our view, persons subject to section 29550.1 and those subject to sections 29550 and 29550.2 are not similarly situated. Counties operate the jails and typically

bear the expense of providing for persons held there. (§ 29602, Pen. Code, §§ 4000, 4015; *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1813-1814.) Under section 29550, subdivision (c), a county may recoup its “actual administrative costs” directly from the arrested person if the person was arrested by county personnel. The county may also recoup its actual costs directly from the arrested person when the arrest was made by a governmental entity not specified in sections 29550 or 29550.1, which would include state law enforcement agencies. (§ 29550.2, subd. (a).) But where the arrest was made by a “city, special district, school district, community college district, college, or university,” the county may bill the jurisdiction for no more than “one-half” of the county’s “actual administrative costs.” (§ 29550, subd. (a).) Under section 29550.1, the local jurisdiction may, in turn, recover from the arrested person the fee “imposed by a county.” (§ 29550.1.) Thus, someone like defendant, who was arrested by a local jurisdiction, is liable for half of that for which county or state arrestees are liable. Consequently, the local arrestee and the county and state arrestees are not similarly situated.

Even if these classes of arrestees were similarly situated for purposes of the law, there is a conceivable rational basis for the differential treatment. Although a person arrested by a local jurisdiction will be required to pay a booking fee even absent an ability-to-pay finding and other arrestees will not have to pay if they do not have the ability, the local arrestee has the benefit of being charged half what other arrestees are charged. The Legislature could rationally have concluded that imposing an ability-to-pay condition in cases of county and state arrestees but omitting it as to local arrestees was reasonable because the former are exposed to a potential debt two times the size of that the latter will have to pay. This is a plausible basis for the differential treatment.

In any event, even if equal protection principles necessitate reading section 29550.1 as mandating an ability-to-pay finding, the trial court gave defendant the opportunity to demonstrate that he had no ability to pay and he waived it. After imposing

the booking fee, along with other fees and fines, the trial court asked: “[D]oes Mr. Ellis waive a formal hearing with regard to ability to pay?” Defense counsel responded affirmatively. It is true, as defendant argues, that a waiver must be knowing and intelligent and made with awareness of its consequences. “An awareness of the consequences of waiving any right should include an understanding of the impact of that waiver” (*People v. Ambrose* (1992) 7 Cal.App.4th 1917, 1922.) Here, the trial court’s imposition of the fines and fees was clear. The court told defendant, “*You will pay a restitution fine of \$4,400,*” and “*You will pay a court security fee of \$60, a criminal conviction assessment of \$60, a criminal justice administration fee of \$129.75 to the City of Mountain View.*” (Italics added.) In almost the next breath, the court asked if defendant waived a “formal hearing with regard to ability to pay?” The consequences of waiving the hearing are implicit in the trial court’s statements: Defendant will have to pay.

Defendant argues that if we accept the waiver, then his attorney was ineffective for permitting it. We disagree. Where the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged, we reject an ineffective-assistance argument unless there simply could be no satisfactory explanation. (*People v. Avena* (1996) 13 Cal.4th 394, 419.) There are several satisfactory explanations for counsel’s waiving an ability-to-pay hearing, one of which would be counsel’s knowledge of defendant’s financial condition. In short, defendant affirmatively waived the opportunity to show he lacked the ability to pay and he has not demonstrated that his counsel was ineffective for waiving the right on his behalf.

III. DISPOSITION

The judgment is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Duffy, J.*

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.