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

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES A. GRAHAM,

Defendant and Appellant.

H040457

(Santa Clara County  
Super. Ct. No. C1228376)

Defendant James A. Graham pleaded no contest to assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).)<sup>1</sup> He admitted allegations that he personally used a dangerous and deadly weapon in committing the offense, and that he personally inflicted great bodily injury on the victim. (§§ 667, 1192.7, subd. (c), 12022.7, subd. (a).) In accord with a plea agreement, the trial court denied probation and sentenced defendant to four years in state prison. The trial court further ordered that “defendant shall have absolutely no contact with the victim in this case.”

On appeal, defendant contends the trial court lacked authority to issue the no-contact order. We agree. We will strike the no-contact order and affirm the judgment as modified.

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<sup>1</sup> Subsequent undesignated statutory references are to the Penal Code.

## I. FACTUAL AND PROCEDURAL BACKGROUND

### A. *Facts of the Offense*<sup>2</sup>

On March 6, 2012, San José police responded to a report of a stabbing incident. The victim, defendant's neighbor, told police he had gotten into an argument with defendant over a garbage can. Defendant approached the victim on his porch and the two began to fight, whereupon defendant stabbed the victim multiple times with a kitchen knife. Defendant drove away before police arrived. The victim suffered 11 stab wounds to his back, head, and arm. His injuries included a collapsed lung but were apparently not life threatening.

### B. *Procedural Background*

On March 22, 2012, the prosecution charged defendant by felony complaint with one count of assault with a deadly weapon. (§ 245, subd. (a)(1).) The complaint further alleged that defendant personally used a dangerous and deadly weapon—a knife—in the commission of the offense, and that he personally inflicted great bodily injury on the victim. (§§ 667, 1192.7, subd. (c), 12022.7, subd. (a).) On August 1, 2013, defendant pleaded no contest to the charged offense and admitted the enhancement allegations in exchange for a sentence of four years in prison.

It appears the trial court imposed a protective order at some point during the pendency of the proceedings. The probation report stated: “The victim would like the restraining order to remain in effect for as long as possible.” The report went on to recommend that “defendant shall have no contact with the victim.”

At sentencing, the trial court denied probation and imposed a term of four years in state prison in accord with the plea agreement. The court further ordered: “The defendant shall have absolutely no contact with the victim in the case.” The court did not specify any duration for the no contact order and did not state any statutory basis for it.

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<sup>2</sup> The factual summary is based on a description of the police report as set forth in a neuropsychologist's report. The probation report contains no summary of the facts.

Defendant did not lodge an objection to the no-contact order, and the record does not contain a written copy of the order. The minutes of the sentencing hearing include a check mark next to a box labeled “No contact with the victim or family/co-defts unless appr by APO.”

## II. DISCUSSION

Defendant contends the trial court lacked authority to impose a no-contact order once he was sentenced to prison. The Attorney General argues that defendant forfeited his claim by failing to object in the trial court, but that the no-contact order was nonetheless authorized. The Attorney General concedes that the trial court had no statutory basis for the order, but she contends the court had inherent authority to impose a no-contact order given the nature of the offense. We conclude defendant’s claim is not forfeited because the no-contact order lacked any legal basis and therefore constituted an unauthorized sentence.

### A. *Forfeiture*

Generally, a defendant forfeits an issue on appeal that he or she did not raise in the trial court. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 381 (*Ponce*)). “But there are exceptions to this rule for unauthorized sentences and sentencing decisions that are in excess of the trial court’s jurisdiction.” (*Ibid.*) “A claim that a sentence is unauthorized [. . .] may be raised for the first time on appeal, and is subject to judicial correction whenever the error comes to the attention of the reviewing court. [Citations.]” (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.) Because defendant challenges the jurisdictional validity of the trial court’s no-contact order, we will consider defendant’s claim on the merits. (*Id.* at pp. 381-382 [validity of protective order imposed at sentencing].)

### B. *The Trial Court Lacked Authority to Impose the No-Contact Order*

Several statutes permit imposition of a protective order on a criminal defendant under certain circumstances. Under section 136.2, subdivision (a), for example, courts

are authorized to issue protective orders that are operative only during the pendency of the criminal proceedings and as prejudgment orders. (*People v. Selga* (2008) 162 Cal.App.4th 113, 119.) Post-judgment protective orders are authorized under subdivision (i) of section 136.2, but only if the defendant has been convicted of a crime of domestic violence or a registerable sex offense.

The no-contact order imposed in this case was not authorized by any statute. The Attorney General concedes that the trial court had no statutory authority to issue a no-contact order once defendant was sentenced to a four-year prison term. This concession is well taken. (*People v. Robertson* (2012) 208 Cal.App.4th 965, 996 (*Robertson*) [trial court had no statutory authority to issue a no-contact order at sentencing].) But the Attorney General contends the trial court had “inherent authority” to issue the no-contact order. Other than the California Rules of Court discussed below, the Attorney General cites no authority supporting this proposition, which courts have previously rejected. (*Robertson, supra*, 208 Cal.App.4th at p. 996; *Ponce, supra*, 173 Cal.App.4th at p. 384.) Instead, the Attorney General cites rule 4.410 of the California Rules of Court, which sets forth the general objectives of sentencing and states that sentencing judges should be guided by, among other things, the facts and circumstances of the case. She also cites rule 4.421, which lists circumstances in aggravation that may apply when sentencing a defendant. But those rules do not address protective orders. Nor do they grant trial courts the inherent authority the Attorney General seeks here.

“An existing body of statutory law regulates restraining orders. ‘ “[I]nherent powers should never be exercised in such a manner as to nullify existing legislation. . . .” ’ [Citation.] Where the Legislature authorizes a specific variety of available procedures, the courts should use them and should normally refrain from exercising their inherent powers to invent alternatives. [Citation.] Moreover, even where a court has inherent authority over an area where the Legislature has not acted, this does not authorize its issuing orders against defendants by fiat or without any valid showing to

justify the need for the order. [Citation].” (*Ponce, supra*, 173 Cal.App.4th at pp. 383-384.)

Here, the prosecutor made no offer of proof or argument below concerning grounds for a no-contact order, much less an order of infinite duration. Instead, the Attorney General contends the order was justified based on the violent nature of the offense, in which defendant repeatedly stabbed an unarmed victim with a knife. But the nature of the harm here does not appear substantially greater than that in other cases where courts have declined to find inherent authority for a no-contact order. (See *Robertson, supra*, 208 Cal.App.4th at p. 996 [finding no inherent authority for a no-contact order where the defendant was convicted of forcible rape, sexual penetration by a foreign object, and aggravated kidnapping for the purpose of committing rape].)

We conclude that the trial court in this case did not have the inherent authority to issue a no-contact order when it sentenced defendant to a four-year prison term. In the absence of statutory authority, the order was unauthorized and must be stricken.

### **III. DISPOSITION**

The no-contact order orally imposed during the October 31, 2013, sentencing hearing is stricken. The judgment is affirmed in all other respects.

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Márquez, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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Grover, J.