

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

RAMIRO VILLALOBOS,

Appellant,
Defendant and ~~Petitioner.~~

No. S176574

Court of Appeal
No. F056729

Tulare County
Trial Court No.
VCF189886A

APPELLANT'S REPLY BRIEF ON THE MERITS

Following Affirmance of Imposition of Restitution Fine
by the Fifth District of the Court of Appeal
State of California

SUPREME COURT
FILED

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Frederick K. Ohlrich Clerk

Deputy

Grace Lidia Suarez
Attorney at Law
SBN 67736

508 Liberty Street
San Francisco CA 94114
888-825-8748 (voice and fax)
gracels@electric-law.com

Attorney for Appellant/Petitioner
Appointed by the Supreme Court
of the State of California

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APPELLANT'S REPLY BRIEF ON THE MERITS

ARGUMENT

**TRIAL COURTS MUST BE DIRECTED TO INFORM
DEFENDANTS REGARDING RESTITUTION FINES IF THEY ARE
NOT MENTIONED IN THE PLEA AGREEMENT**

**A. Respondent's Attempt to Distinguish
Walker Further Confuses the Law and will
Result in Even More Litigation**

Respondent attempts to distinguish this Court's decision in *People v. Walker* (1991) 54 Cal.3d 1013 from the present case, an attempt that further confuses and complicates existing law and which will lead to more litigation. Petitioner requests that this Court direct trial courts to inform defendants of the court's power to impose restitution fines at its discretion if they are not mentioned in the plea agreement.

In *People v. Walker, supra*, 54 Cal.3d 1013, as in this case, the defendant entered a guilty plea pursuant to a bargain. During the plea colloquy, the trial court informed the defendant that "the maximum penalties provided by law are ... and a fine of up to \$10,000." The court sentenced the defendant immediately after the guilty plea. It imposed a five year sentence in accordance with the plea bargain and also imposed a restitution fine of \$5,000, "although the plea agreement did not mention such a fine." (*People v. Walker, supra*, 54 Cal.3d at p. 1019.) The probation report, which had been prepared prior to the plea, and supplied to defense counsel, recommended a \$7,000 fine. There was no other mention of the possibility of a fine prior to sentencing, but the defense counsel did not object. (*Ibid.*)

Initially, this Court identified the legal principle involved, which was that "the parties must agree to the terms of a plea bargain." (*People v. Walker, supra*, 54 Cal.3d at p. 1020, citing to *People v. Mancheno* (1982) 32 Cal.3d 855, 860.)

After a discussion of the relevant law, including the United States Supreme Court's decision in *Santobello v. New York* (1971) 404 U.S. 257, 262, this Court held that "the \$5,000 restitution fine was a significant deviation from the negotiated terms of the bargain," and reduced the fine to

the statutory minimum. (*People v. Walker, supra*, 54 Cal.3d at pp. 1029-1030.)

The situation presented in this case is almost identical to *Walker*. In fact, the error in this case is even more egregious. Here, appellant was not informed of the possibility of a fine at all and respondent does not dispute that. (Respondent's Brief on the Merits, hereafter RBM, pp. 1-3.)

In addition, the only advisement regarding restitution was that appellant might have to pay actual restitution to the victim. Respondent also concedes that "restitution to the victim and restitution fines are different," but argues that the trial court did not have to give a "detailed lecture on criminal procedure ..." (RBM, 12, citing to the Court of Appeal's ruling at p. 8 [internal quotation marks omitted]), and that this advisement further distinguished the present case from *Walker*. Appellant is not asking for a detailed lecture, just the admonition already required by *Walker*: that he would have to pay a restitution fine between \$200 and \$10,000.

Respondent likens this case to this Court's decision in *People v. Crandell* (2007) 40 Cal.4th 1301, 1309. (RBM 3-4; 7-8.) In that case, although the \$2,600 fine eventually imposed was not mentioned by the prosecutor when reciting the plea agreement, the trial court informed Crandell that he would "have to pay a restitution fund fine of a minimum of \$200, a maximum of \$10,000," and defendant acknowledged that he

understood. This Court found that this admonition was sufficient to put the defendant on notice that the amount of the fine was to be set by the trial court. (*People v. Crandell, supra*, 40 Cal.4th at p. 1310.)

Crandell distinguished *People v. Walker* on the grounds that the trial court in *Crandell* told defendant he would have to pay a restitution fine and specified the range of the amount and determined that no other promises had been made to the defendant. This combination meant that *Crandell* "could not reasonably have understood his negotiated disposition to signify that no substantial restitution fine would be imposed." (*People v. Crandell, supra*, 40 Cal.4th at p. 1310.)

Respondent concedes that "unlike in *Crandell*, the court here did not advise appellant of the minimum and maximum amounts of the restitution fines that would be imposed," and mentioned only "restitution" and not restitution fines. (RBM, 11.) Respondent contends, however, that "even though no mention was made of the term 'restitution fines,' there is still nothing in the record to indicate that restitution fines were barred by the plea agreement or that the parties bargained for or agreed on any term regarding fines." (RBM 12.) But there was nothing in *Walker* to indicate that restitution fines were barred by the plea agreement or that the parties bargained for the amount of the fine.

Respondent's attempt to distinguish *Walker* at pp. 12-13 only serves to highlight the similarities between *Walker* and the present case. In both cases, appellant was not informed of the restitution fines either by the prosecutor or by the court. Respondent's attempt to distinguish *Walker* fails.

C. Respondent's Argument that the Fines Do Not Significantly Increase the Punishment Introduces Another Level of Complexity Into the Equation Which Will Add to Litigation

Finally, respondent argues that the fines did not significantly increase punishment, citing to *Walker, supra*, 54 Cal.3d at p. 1027. (RBM 13.) *Walker*, respondent states, was sentenced to five years in prison and a \$5,000 restitution fine, while here petitioner was sentenced to 17 years and a \$4,000 fine, which was less per year and less than the amount allowed by Penal Code section 1202.4, subdivision (b)(2). (BRM, 13.)

However, *Walker's* discussion of "significant" does not support respondent's hairsplitting analysis. What this Court said was that

A punishment or related condition that is insignificant relative to the whole, such as a standard condition of probation, may be imposed whether or not it was part of the express negotiations. (*People v. Walker, supra*, 54 Cal.3d at p. 1024.)

The present case does not involve a "standard condition of probation." It involves a fine that is only \$1,000 less than the one imposed in *Walker*. Respondent also fails to consider that a parole revocation fine

the same amount must also be imposed, exposing appellant to \$8,000 in potential fines.

This Court warned that "[c]ourts should generally be cautious about deeming nonbargained punishment to be insignificant." (*People v. Walker, supra*, 54 Cal.3d at p. 1027, fn. 3.) Yet that is precisely what Respondent urges this Court to do.

Respondent's requirement that appellate courts analyze significance by dividing the amount of the fine by the years of imprisonment means adds one more level of complexity to the review of these types of errors and will result in more conflicting opinions and more litigation.

B. The Other Cases Cited by Respondent are Irrelevant

The other cases cited by respondent are either irrelevant or easily distinguishable.

In *In re Moser* (1993) 6 Cal.4th 342, cited by respondent, the trial court informed defendant that the parole period for his offense was from 36 to 48 months, when actually it was a mandated lifetime parole. Even so, this Court remanded the case to determine whether the length of parole was an element of the plea negotiations. (*In re Moser, supra*, 6 Cal.4th at p. 358.)

Also cited is *People v. McClellan* (1993) 6 Cal.4th 367. In that case the trial court failed to advise the defendant that he would have to register as a sex offender. This Court found that the registration requirement was mandatory and was therefore not part of a plea agreement. (*People v. McClellan, supra*, 6 Cal.4th at pp. 380-381.) The result in *McClellan* might well have been different if the registration requirement had been discretionary. In the present case, all but \$200 is discretionary.

In two footnotes, respondent mentions *People v. Soria* (2010) 48 Cal.4th 58, 65, fn. 6.) In that case, this Court mentioned that "defendants are free to negotiate the amount of restitution fines as part of their plea bargains." Respondent notes that *Soria* did not require defendants to do so. (RBM 10, fn. 5.) Likewise, prosecutors are free to negotiate fines. The issue here is not whether defendants should be required to negotiate restitution fines, but whether courts may impose restitution fines when they are not made part of the plea bargain and defendants are not made aware that they may be imposed.

In another footnote, Respondent mentions *People v. Dickerson* (2004) 122 Cal.App.4th 1374, 1385, a decision of the Sixth District where the Court of Appeal concluded that the fact that the trial court said nothing about about a restitution fine being imposed when reciting the plea agreement meant the parties had reached no agreement on the imposition or

the amount of the fines, which led the court to conclude that it was one of the circumstances suggesting that the parties intended to leave the question of the fines to the court's discretion. (RBM 10-11, fn. 6.) What Respondent forgets to say is that Dickerson acknowledged that the court "must impose a restitution fine of between \$200 and \$10,000." (*People v. Dickerson*, *supra*, 122 Cal.App.4th at p. 1377.)

**D. It is Time to Establish a Bright-Line Rule
and End the Confusion Over Restitution
Fines**

This Court has said, more than once, that "[c]ourts and the parties should take care to consider restitution fines during the plea negotiations." (*People v. Walker*, *supra*, 54 Cal.3d at p. 1030.) Respondent points out that this Court "does not actually require such fines to be the subject of plea negotiations, or of final plea agreements." (RBM, 9.)

It is this sort of hairsplitting that petitioner urges this Court to end. This Court could end it by ruling that if restitution fines are not mentioned in the plea agreement, the court must inform defendants that such fines will be imposed. At that point either defendants will indicate their acceptance or the matter will return to the bargaining table.

Until such time as this Court mandates that trial courts inform defendants of restitution fines, cases such as this one will continue to be

brought, and more and more distinctions and outright errors will continue to be made.

CONCLUSION

Petitioner requests that this Court reverse the judgment of the Court of Appeal and reduce the fines to the minimum amount.

DATED: _____

Respectfully submitted

GRACE LIDIA SUAREZ
Attorney at Law
Counsel for Appellant/Petitioner

WORD COUNT CERTIFICATE

I certify that this document was formatted using Times New Roman
13-point type and contains 2,306 words, as computed by Apple Pages.

Grace Lidia Suarez

PROOF OF SERVICE

I, Grace L. Suarez, say that I am over 18 years of age and not a party to the above action. My business address is 508 Liberty Street, San Francisco, California 94114.

On _____, _____, I served the attached on the following by placing true copies in a sealed envelope with postage fully paid, in the United States Mail at San Francisco, California, addressed as follows:

Ramiro Villalobos

Attorney General's Office
PO Box 944255
Sacramento CA 94244-2550

Central California Appellate Program
2407 J. Street, Ste. 301
Sacramento CA 95816-4736

Tulare County Superior Court
221 S. Mooney Blvd.
Visalia CA 93291

Court of Appeal of the State of California
Fifth Appellate District
2424 Ventura St
Fresno CA 93721-3004

Tulare County District Attorney
121 S. Mooney Blvd. Rm 224
Visalia CA 93291

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, _____ at San Francisco, California.

Grace Lidia Suarez