

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

_____)	(California Supreme
)	Court No. S189373)
PEOPLE OF THE STATE OF CALIFORNIA)	
)	Riverside County
Plaintiff & Respondent,)	Superior Court
)	No. RIF 079858
v.)	
)	
LESTER HARLAND WILSON)	
)	
Defendant and Appellant.)	
_____)	

AUTOMATIC APPEAL FROM THE JUDGMENT OF THE
SUPERIOR COURT OF RIVERSIDE COUNTY

THE HONORABLE ELISABETH SICHEL

APPELLANT'S SUPPLEMENTAL BRIEF

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Under appointment of the
California Supreme Court

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Argument

**This court should remand the case to the trial court
with an order to reconsider the restitution fine.**

Background

Appellant's crime occurred on June 8th, 1997.

When sentenced following his original trial on June 29th, 2000, the court imposed a restitution fine of \$4,000 pursuant to Government Code section 13967, subd. (a). (28 Original RT 3616-3617.) The court failed to

make a determination of appellant's ability to pay, as there was no such requirement under the section in effect at that time.

Following reversal of the death penalty by this court and remand for a new penalty phase trial, the trial court again imposed the death penalty. It does not appear the court addressed the issue of the formerly imposed restitution fine, but rather referenced the victim restitution issue and the amount appellant may have already paid. (3rd Supp. Clerk's Trans. on Appeal, p. 26.) Appellant continues to be subject to the restitution fine in the amount of \$4000 imposed as part of the original judgment.

Applicable Law

Section 1202.04, as amended and enacted in 2004, "provides detailed guidance in setting a restitution fine, including consideration of a defendant's ability to pay." (*People v. Vieira* (2005) 35 Cal.4th 264, 305.) In pertinent part, section 1202.4, subd.(c), now provides that a "defendant's ability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine . . . [but] may be considered only in increasing the amount of the restitution fine in excess of the [statutory] minimum."

In *People v. Covarrubias* (2016) 1 Cal.5th 838, a capital appeal decided by this court subsequent to final briefing in this case, the court

held,

“[As] we explained in *People v. Vieira* (2005) 35 Cal.4th 264 at page 305, that, ‘if the amendatory statute lessening punishment [here, §1202.4] becomes effective prior to the date the judgment of conviction becomes final then, in our opinion, it, and not the old statute in effect when the prohibited act was committed, applies.’ ” ‘[F]or the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed.’ ” (*Id.* at p. 306.) Therefore, the question of defendant’s restitution fine must be remanded for reconsideration under the currently applicable statute.”

(*People v. Covarrubias, supra*, at p. 935.)

Legal Analysis

The trial court here failed to make a determination of appellant’s ability to pay a fine beyond the statutory minimum of \$200, and instead, imposed the amount of \$4,000, as allowed by the statute in effect at the time of appellant’s original sentencing. As described in the accompanying motion to stay this fine, the Department of Corrections and Rehabilitation has been collecting a percentage of all monies received by appellant from

his family since his arrival at San Quentin.

Conclusion

The decision in *People v. Covarrubias* controls this issue. Should the court uphold the judgment, it must nevertheless remand this matter for reconsideration of the restitution fine. Should the People choose not to contest the question of restitution, the trial court should reduce the fine to the statutory minimum.

Dated: 03/08/18

Respectfully submitted,

S/Patrick Morgan Ford
PATRICK MORGAN FORD,
Attorney for Appellant
LESTER HARLAND WILSON

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I, Esther F. Rowe, say: I am a citizen of the United States, over 18 years of age, and employed in the County of San Diego, California, in which county the within-mentioned delivery occurred, and not a party to the subject case. My business address is 1901 First Avenue, Suite 400, San Diego, CA 92101. On March 7, 2018, I served a *Appellant's Supplemental Brief*, of which a true and correct copy of the document filed in the case is affixed, by placing a copy thereof in a separate envelope for each addressee respectively as follows:

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Additionally, I electronically served a copy of the above document as follows: 1) California Supreme Court, truefiling.com, and 2) Attorney General electronic notification address, ADIEService@doj.ca.gov.

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Esther F. Rowe
Esther F. Rowe

People v. Lester Harland Wilson

CASE NO. S189373

Appellant's Supplemental Brief

Certificate of Compliance

I, Patrick Morgan Ford, certify that the within brief consists of 1,030 words, as determined by the word count feature of the program used to produce the brief.

Dated: 3/9/18

s/Patrick Morgan Ford
PATRICK MORGAN FORD

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Case Name: **PEOPLE v. WILSON (LESTER HARLAND)**

Case Number: **S189373**

Lower Court Case Number:

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/s/Patrick Ford

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