IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. VELIA DUEÑAS, Defendant and Appellant.	Ct. of Appeal No. B285645 App. Div. No. BR052831 Sup. Ct. No. 5VY02034

Appeal from an Order
of the Superior Court, County of Los Angeles
Hon. Eric P. Harmon, Judge

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE

This is an appeal of an order of the superior court assessing $220 in court fees and a restitution fine (collectively "court fees") to indigent defendant Velia Dueñas without consideration of her inability to pay.

Ms. Dueñas pleaded *nolo contendere* to the misdemeanor offense of driving on a suspended license. (Clerk's Transcript ["CT"] 21.) On February 22, 2016, she was sentenced to probation, conditions of which included thirty days in county jail and a $300 statutory fine for which Ms. Dueñas served an additional nine days in jail because she could not afford to pay. (CT 25-26.) The court also assessed, *inter alia*, a $30 court facilities fee, a $40 court operations fee, and a $150 restitution fine. (*Ibid.*) The court granted Ms. Dueñas's request for an ability-to-pay hearing on attorney's fees and the court fees. (February 22, 2016 Reporter's Transcript [hereafter "FT"] 11, 16; CT 26.)

At the March 17, 2016 ability-to-pay hearing, Ms. Dueñas produced uncontested evidence of her indigence (CT 40-42), and on this basis the court waived attorney's fees. (March 17, 2016 Reporter's Transcript ["MT"] 1-2.) The court nonetheless refused to take Ms. Dueñas's inability to pay into account when assessing court fees and imposed the full $220 in fees. (MT 12, 16.)

On April 15, 2016, Ms. Dueñas filed a Notice of Appeal of the court's March 17, 2016 order, challenging the assessment of court fees without consideration of her inability to pay. (CT 50-51.) On September 1, 2017, the Appellate Division issued an opinion affirming the court's ruling. (Ex. A, Opinion, *People v. Dueñas* (Super.

Ct. Los Angeles County, Sept. 1, 2017, BR052381).) The Appellate Division then denied Ms. Dueñas's request for certification for transfer of the case, Ms. Dueñas petitioned this Court, and on October 18, 2017, this Court ordered the case transferred to this Court for hearing and judgment. (*People v. Dueñas* [order transferring case on petition for transfer issued Oct. 18, 2017, B285645].)

STATEMENT OF APPEALABILITY

This appeal is authorized as a post-judgment order on court fees that affects Ms. Dueñas's substantial constitutional rights. (See Pen. Code, § 1466(b)(2); Cal. Rules of Court, rule 8.304(b)(4)(B).) Upon petition by Ms. Dueñas, this Court ordered transfer of the case from the Appellate Division of the Los Angeles Superior Court to this Court for hearing and decision. (See Pen. Code, § 1471; Cal. Rules of Court, rule 8.1002(2).)

STATEMENT OF FACTS

A. Factual Background

Velia Dueñas is an indigent mother of two with cerebral palsy who "cannot afford basic necessities for [her] family, much less court costs." (CT 41.) She is unemployed and was unable to complete her high school education due to her disability. (CT 40.) She and her family are homeless; they shuffle back and forth between her mother's house and her mother-in-law's house. (*Ibid*.) In March 2016, the electricity company cut the electricity from Ms. Dueñas's mother-in-law's house because they could not afford the bill. (CT

41.) Ms. Dueñas and her family rely on government benefits to survive. (CT 40, 42.)

The misdemeanor conviction giving rise to this case stems directly from Ms. Dueñas's inability to pay $1,088 that she was assessed for three juvenile citations she received as a teenager. (CT 39.) Because she could not pay her outstanding court debt, her driver's license was suspended, precipitating three misdemeanor convictions for driving with a suspended license and one conviction for failure to appear on a driving without a license charge. (CT 40.) In each instance, Ms. Dueñas could not afford to pay the statutory fine and so had no choice but to serve jail time in lieu of payment. (*Ibid.*) In total, Ms. Dueñas has been sentenced to ninety days in jail for driving with a license that was suspended for failure to pay past court debt, plus an additional fifty-one days in jail due to her inability to pay the statutory fines associated with each conviction. (*Ibid.*) Even after serving this jail time, Ms. Dueñas remained liable for court fees associated with each of her misdemeanor convictions, which have been ordered to collections. (*Ibid.*) Because of her inability to pay her outstanding court debt, her driver's license remains suspended. (*Ibid.*)

B. Procedural History

On July 13, 2015, Ms. Dueñas pleaded *nolo contendere* to the instant offense, misdemeanor driving with a suspended license. (See Veh. Code, § 14601.1(a); CT 20-21.) On February 22, 2016, the court sentenced Ms. Dueñas to thirty-six months of probation, with the additional conditions of serving thirty days in county jail and paying a $300 fine. (CT 25.) Due to Ms. Dueñas's inability to pay the fine,

she was forced to serve an additional nine days in county jail. (CT 25, 31.) The court also imposed, *inter alia*, a $30 court facilities fee (Gov. Code, § 70373), a $40 court operations fee (Pen. Code, § 1465.8), and a $150 restitution fine (Pen. Code, § 1202.4). (CT 25-26.) At the February 22, 2016 sentencing hearing, Ms. Dueñas's counsel challenged the imposition of the court fees based on Ms. Dueñas's inability to pay, requesting "an ability to pay hearing for the attorney's fees and court fees." (FT 11.) The trial court deferred consideration of ability-to-pay arguments to a hearing calendared for March 17, 2016. (FT 16; CT 26.)

At the ability-to-pay hearing, Ms. Dueñas offered uncontested evidence that she was indigent, homeless, disabled, and responsible for the care of two children. (CT 39-42.) The court waived imposition of attorney's fees based on its determination that Ms. Dueñas was indigent. (CT 48; MT 1-2, 6, 16.) Despite finding that Ms. Dueñas was indigent, the court nonetheless ordered her to pay $220 in court fees. (CT 49.) The court held that the $30 court facilities fee and the $40 court operations fee are mandatory, even as applied to a defendant lacking the ability to pay. (MT 12.) Although the $150 restitution fine may be waived by showing "compelling and extraordinary reasons" (Pen. Code, § 1202.4(b)), under the statute "[a] defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine." (Pen. Code, § 1202.4(c).) The court held that Ms. Dueñas's circumstances did not qualify to waive the fine. (MT 16.)

ARGUMENT

This appeal presents an issue of profound consequence for thousands of California's poorest residents: whether failure to consider an indigent defendant's inability to pay when imposing court fees violates the equal protection and due process guarantees of the California and the United States constitutions.

The assessment of court fees to Appellant Velia Dueñas without consideration of her undisputed inability to pay impermissibly punishes her on account of her poverty, invidiously discriminating against her and contravening the fundamental fairness required by the Equal Protection Clause and Due Process Clause. For an indigent, homeless, disabled defendant such as Ms. Dueñas, these court fees have punitive consequences that infringe on basic liberties and threaten minimum subsistence, exposing her to insurmountable court debt, harsh collection methods, potential barred access to expungement, and past driver's license suspension. For the indigent, such fines and fees perpetuate a cycle of incarceration and impoverishment. Because imposing court fees on those who indisputably cannot afford to pay them cannot rationally further any State interest in generating revenue, refusing to consider inability to pay is both irrational and counterproductive.

I. STANDARD OF REVIEW IS DE NOVO.

The Court of Appeal reviews questions of law, including the constitutional questions raised in this appeal, de novo. (*People v. Byron* (2016) 246 Cal.App.4th 1009, 1013.)

II. CALIFORNIA AND U.S. CONSTITUTIONS GUARANTEE EQUAL JUSTICE AND FUNDAMENTAL FAIRNESS TO INDIGENT DEFENDANTS.

The California and the U.S. constitutions provide robust protections to ensure that indigent defendants are provided equal justice and fundamental fairness in the administration of the criminal justice system.[1] (See U.S. Const., 14th Amend.)

A. Equal Protection and Due Process Principles Prohibit Punishing Indigent Defendants For Their Poverty.

Equal protection and due process protections prohibit "punishing a person for [her] poverty." (*Bearden v. Georgia* (1983) 461 U.S. 660, 671.) While due process concerns involve questions of "the fairness of relations between the criminal defendant and the State," and equal protection asks "whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants," in questions regarding the constitutional protections due to indigent defendants, "[d]ue process and equal principles converge." (*Id.* at p. 665.)

The U.S. Supreme Court articulated these foundational principles in *Bearden v. Georgia*, a decision that prohibited penalizing indigent defendants with imprisonment solely for inability to pay a

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[1] The same analysis applies to both federal and state constitutional protections. "The Fourteenth Amendment's guarantee of equal protection and the California Constitution's protection of the same right (Cal. Const., art. I, § 7, subd. (a), art. IV, § 16, subd. (a)) are substantially equivalent and are analyzed in a similar fashion." (*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 207 [quoting *Kenneally* v. *Medical Board* (1994) 27 Cal.App.4th 489, 495].)

fine. (461 U.S. at pp. 661-62; see also *Tate v. Short* (1971) 401 U.S. 396, 397-98 [prohibiting imprisonment for non-willful nonpayment of fines]; *Williams v. Illinois* (1970) 399 U.S. 235, 240-41 [prohibiting imprisonment of an indigent defendant for longer than the statutory maximum of the underlying crime for nonpayment of court fines and fees].) In *Bearden*, a probationer raised an equal protection challenge to a Georgia court's decision to revoke his probation for nonpayment of a fine, without considering his inability to pay. (461 U.S. at pp. 663-64.) The Court reasoned that it had "long been sensitive to the treatment of indigents in our criminal justice system," and held that if a probationer "cannot [pay the fine] . . . through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available." (*Id.* at pp. 664, 668-69.)

Thus, *Bearden* articulated two core principles governing this appeal: First, in the criminal justice context, a court's review of a challenged law must be "sensitive to the treatment of indigents." (*Id.* at p. 664; accord *Tate*, *supra*, 401 U.S. at pp. 398-99; *Williams*, *supra*, 399 U.S. at p. 241.) Second, "deprivation" of basic liberties "simply because, through no fault of his own, [an indigent defendant] cannot pay [a] fine," is an impermissible punishment on the basis of poverty. (*Bearden*, *supra*, 461 U.S. at pp. 672-73; see *Tate*, *supra*, 401 U.S. at pp. 397-98; *Williams*, *supra*, 399 U.S. at pp. 241-42.) Determining whether an indigent defendant has been impermissibly punished on the basis of poverty "requires a careful inquiry into such factors as 'the nature of the individual interest affected, the

extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose.'" (*Bearden*, *supra*, 461 U.S. at pp. 666-67 [quoting *Williams*, *supra*, 399 U.S. at p. 260 [conc. opn. of Harlan, J.].)

The Court made clear that these constitutional protections are not limited to cases involving incarceration, but rather prohibit penalizing an indigent defendant for poverty in any aspect of the "administration of . . . [this country's] criminal law." (*Griffin v. Illinois* (1956) 351 U.S. 12, 19 [plur. opn.].) Cases involving incarceration, like *Bearden* and its antecedents, are rooted in the "equal justice" principle set forth in *Griffin v. Illinois*, a case involving access to appellate transcripts. (*Id.* at pp. 16, 17 [holding that "equal justice" is "the central aim of our entire judicial system"]; see *Bearden*, *supra*, 461 U.S. at p. 664 [applying *Griffin* and noting it "has been applied in numerous other contexts"]; *Williams*, *supra*, 399 U.S. at p. 241 ["[a]pplying the teaching of the *Griffin* case"].)

In *Griffin*, the Court considered the constitutional challenge of an indigent defendant unable to pay the fee for a transcript needed for his appeal, and held that, although a State is not required to provide appellate review, "a State that does grant appellate review can[not] do so in a way that discriminates against some convicted defendants on account of their poverty." (351 U.S. at p. 18.) It would be "invidious discrimination," the Court reasoned, because in the same way that "the ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence," so too, ability to pay for transcripts has no bearing on the appropriateness

of appellate review. (*Id.* at pp. 17-18.) The Court held that "affording equal justice to all and special privileges to none in the administration of . . . criminal law" requires that indigent defendants be "afforded as adequate appellate review as defendants who have money enough to buy transcripts." (*Id.* at p. 19).

In *James v. Strange*, the Court likewise made clear that courts must be sensitive to any statute that deprives indigent defendants of basic liberties without considering their financial hardships. ((1972) 407 U.S. 128, 141-42.) There, the Court upheld a constitutional challenge by an indigent defendant to invalidate a Kansas attorney's fees recoupment statute that excluded criminal defendants owing court debt from certain judgment protections afforded to civil debtors. (*Id.* at p. 135.) The Court found a clear liberty interest at stake, noting that its precedents had long recognized "the potential of certain garnishment proceedings to 'impose tremendous hardship on wage earners with families to support.'" (*Id.* at pp. 135-36 [quoting *Sniadach* v. *Fam. Finance Corp.* (1969) 395 U.S. 337, 340]; see also *id.* at p. 35 [defining "wages" as "sustenance, with which [an indigent defendant] supports himself and his family"].) *James* showed solicitude for the hardships faced by indigent convicted defendants in weighing the interests of the individual and the State:

> A criminal conviction usually limits employment opportunities. This is especially true where a prison sentence has been served. It is in the interest of society and the State that such a defendant, upon satisfaction of the criminal penalties imposed, be afforded a reasonable opportunity of employment, rehabilitation and return to useful citizenship.

(*Id.* at p. 139.) The Court held that the State's legitimate interest in recoupment was "not thwarted by requiring more even treatment of indigent criminal defendants," and "need not blight in such discriminatory fashion the hopes of indigents for self-sufficiency and self-respect." (*Id.* at pp. 141-42.)

Since *Griffin*, "the Court has had frequent occasion to reaffirm allegiance to the basic command that justice be applied equally to all persons," and its "[s]ubsequent decisions . . . have pointedly demonstrated that the passage of time has heightened rather than weakened the attempts to mitigate the disparate treatment of indigents in the criminal process." (*Williams*, *supra*, 399 U.S. at p. 241; see *Bearden*, *supra*, 461 U.S. at p. 664 [collecting cases].) State and federal courts have increasingly confirmed the applicability of *Griffin* and *Bearden*'s protections for indigent defendants to analogous deprivations of protected liberties. (See, e.g., *Hernandez v. Session* (9th Cir., Oct. 2, 2017) __ F.3d __ [2017 WL 4341748], at *11, *12 [applying *Bearden* to hold that judges must consider a detainee's ability to pay when setting bail in immigration court]; *O'Donnell v. Harris County* (S.D. Tex., Apr. 28, 2017, 4:16-cv-01414) [holding bail scheme likely to be unconstitutional]; see also *Garcia v. Santana* (2009) 174 Cal.App.4th 464, 477; *Nelson v. Colorado* (2017) 137 S.Ct. 1249, 1255 [holding that criminal defendants have "an obvious interest" in money paid to the State as part of their court debt].)

B. California's Constitution Subjects Wealth-Based Discrimination to Strict Scrutiny.

California's constitution provides an additional and independent basis to prohibit the assessment of court fees to

indigent defendants without consideration of inability to pay. California's Equal Protection Clause, which is more protective than its federal counterpart, recognizes wealth as a suspect class and subjects wealth-based discrimination to strict scrutiny. (See *In re Antazo* (1970) 3 Cal.3d 100, 111-12; *Serrano v. Priest* (1970) 18 Cal.3d 728, 764-65; see also *Hartzell v. Connell* (1984) 35 Cal.3d 899, 924 [conc. opn. of Bird, J.].)

In *Antazo*, the California Supreme Court invalidated the application of a statute requiring a defendant to "pay a fine and a penalty assessment . . . [or] serve them out in jail at a specified rate per day because he is unable to pay them." (3 Cal.3d at p. 103.) The Court reasoned that payment of a fine to avoid imprisonment is a "meaningless" option for a poor defendant that "necessarily results in different treatment for the rich defendant and for the poor one." (*Id.* at pp. 108, 109.) The Court held that this "discrimination based upon poverty" involves a "suspect classification[]" warranting strict scrutiny. (*Id.* at p. 112.) "Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose." (*Id.* at p. 111). The *Antaz*o Court made clear that even if the State had an interest that was "substantial and legitimate" in collecting fines, the challenged statute was impermissible because "the practice" of imprisonment for nonpayment was not "necessary to promote" its stated interests. (*Id.* at p. 112.)

III. ASSESSMENT OF COURT FEES WITHOUT CONSIDERATION OF MS. DUEÑAS'S INABILITY TO PAY IS UNCONSTITUTIONAL.

A. Courts Must Consider Inability to Pay When Assessing the Court Facilities Fee (Gov. Code, § 70373) and Court Operations Fee (Pen. Code, § 1465.8).

The court facilities fee statute assessed to Ms. Dueñas provides that a fee of $30 "shall be imposed on every conviction for a criminal offense" "[t]o ensure and maintain adequate funding for court facilities." (Gov. Code, § 70373.) The court operations fee statute likewise provides that an assessment of $40 "shall be imposed on every conviction for a criminal offense" "[t]o assist in funding court operations." (Pen. Code, § 1465.8.) Both statutes, which are intended solely to raise revenue to fund court operations, are silent as to whether a sentencing court may consider a defendant's inability to pay, and the sentencing court interpreted this silence to make imposition of the fines mandatory and to prohibit consideration of Ms. Dueñas's indigence. (MT 11.) This constitutes legal error.

a. *Griffin*, *Bearden*, and Their Progeny Prohibit Assessing These Court Fees to Indigent Defendants.

Bearden articulated a multi-factor test to determine whether a statute operates as a penalty on the basis of poverty, directing courts to consider "the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose." (461 U.S. at pp. 666-67 [quoting *Williams*, *supra*, 399 U.S. at p. 260] [conc. opn. of Harlan, J.].)

1. Mandatory Court Fees "Impose Tremendous Hardship" on the Liberty and Subsistence of the Indigent.

The first two *Bearden* factors are the "nature" and "extent" of the indigent defendant's "individual interest affected." (461 U.S. at pp. 666-67). Assessing the court fees to indigent defendants like Ms. Dueñas without consideration of inability to pay "impose[s] tremendous hardship" (*James*, *supra*, 407 U.S. at p. 136) on economic self-sufficiency and minimum subsistence, as well as on access to the employment, medical care, and education required to escape poverty.

- Inability to pay court fees subjects indigent defendants to harsh and punitive collection methods, including escalating additional charges and penalties,[2] wage garnishments, tax refund intercepts, and levies against assets.[3]
- Individuals with outstanding court debt may be denied discretionary expungement if a court finds that their unpaid debt means that granting their petition would not be in the

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[2] Unpaid court debt may be ordered "to collection by a comprehensive collection program" that raises revenue for the judicial system and can assess additional charges. (Pen. Code, § 1463.007(b); see Pen. Code, § 1463.010.) Collection programs may be run by third-party private collection services. (Pen. Code, § 1463.010(a), (b).) Defendants who cannot pay their court fees are subject to a $300 late penalty. (Pen. Code, § 1214.1.)

[3] Rev. & Tax. Code, § 19280(a), (c)).

"interests of justice." (Pen. Code, § 1203.4(a), (c); *People v. Guillen* (2013) 218 Cal.App.4th 975, 994-95.)[4]

- Prior to June 2017, defendants unable to pay court fees were subject to a driver's license suspension or hold. (See former Veh. Code, §§ 40509(b), 40509.5, 13365(a) (2017).) Suspensions remain in place until all owed court fees are paid, meaning that licenses may remain suspended even if an individual has been making payments for years. (Veh. Code, § 12807.) Since Ms. Dueñas has been unable to pay past court debt, her license remains suspended, limiting her ability to access medical care, employment, and education for her children. (CT 40-42.)

These consequences infringe on the dignity and basic liberties of Ms. Dueñas and indigent defendants like her no less than imprisonment. (See *James*, *supra*, 407 U.S. at pp. 141-42; cf. *Obergefell v. Hodges* (2015) 135 S.Ct. 2584, 2597 ["The fundamental liberties protected by this [Due Process] Clause . . . extend to certain personal choices central to individual dignity and autonomy."].) These consequences "risk denying [Ms. Dueñas] the means needed to keep [her]self and [her] family afloat," and are nearly identical to those deemed intolerable by the U.S. Supreme Court in *James.* (407 U.S. at

[4] In addition, inability to pay the restitution fine bars access to mandatory expungement for indigent defendants who would otherwise be entitled to it. (Pen. Code, § 1203.4; see, e.g., *Guillen*, *supra*, 218 Cal.App.4th at p. 992.)

p. 136.)[5] Spiraling court debt and its consequences prolong and deepen the cycle of poverty and criminal justice system involvement for those who are most in need of "reasonable opportunity of employment, rehabilitation and return to useful citizenship." (*Id.* at p. 139.) As the United States Court of Appeals for the Ninth Circuit recently explained, assessing fees to the indigent can lead to a "debt trap for the poor" and "along with the attendant court appearances, can lead to loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden—a cycle as predictable and counterproductive as it is intractable." (*Rivera v. Orange County Probation Dept.* (9th Cir., 2016) 832 F.3d 1103, 1112, fn. 7.) State and federal authorities have likewise increasingly expressed concern regarding the ways in which court debt disproportionately burdens poor defendants. (See, e.g., U.S. Dept. of J., Civil Rights Div., Dear Colleague Letter, Mar. 14, 2016, p. 2 & fn. 3; Assem. Bill. 103, approved by Governor, June 27, 2017, (2017-2018 Reg. Sess.) [ending driver's license suspension for failure to pay court fees].)

2. Imposing Mandatory Court Fees on Indigent Defendants Does Not Rationally Promote the State's Interest of Revenue Generation.

The remaining *Bearden* factors direct courts to consider "the rationality of the connection between legislative means and

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[5] The California debt collection scheme, like the scheme invalidated in *James*, also strips criminal debtors of certain protections given to other civil judgment debtors. (*James*, *supra*, 407 U.S. at p. 135.) For example, subsection (e) of Penal Code section 1214 excludes criminal debtors from the limitations period available to other civil judgment debtors. (See, e.g., Code Civ. Proc., § 683.020 [limiting enforcement of civil judgment to ten years].)

purpose," and "the existence of alternative means for effectuating the purpose." (461 U.S. at p. 667). Mandatory imposition of court fees on indigent defendants does not rationally further the State's purported interest, which is neither punitive nor rehabilitative, but rather is exclusively to generate revenue for the State. (*People* v. *Castillo* (2010) 182 Cal.App.4th 1410, 1413; *People v. Alford* (2007) 42 Cal.4th 749, 759.)

Courts have recognized that imposing a fee statute with the sole purpose of generating revenue against a defendant who cannot afford to pay the fee is ineffective and irrational. In *Tate v. Short*, for example, the U.S. Supreme Court rejected the government's contrary contention, holding that a scheme threatening imprisonment as a consequence for nonpayment of fines that were "imposed to augment the State's revenues . . . obviously does not serve that purpose; the defendant cannot pay because he is indigent." (401 U.S. 395 at p. 399.) In *Antazo*, the California Supreme Court similarly noted that it "fail[ed] to see how either the threat or the actuality of imprisonment can force a man who is without funds, to pay a fine." (3 Cal.3d at p. 114.)

The Ninth Circuit recently deemed California's fee scheme not only ineffective but also a "counterproductive practice" that has "damaging effects on the community," "operat[es] as a regressive tax," and "undermines the credibility of government and the perceived integrity of the legal process." (*Rivera*, *supra*, 832 F.3d at p. 1112.) The U.S. Department of Justice likewise recognized that imposing court fines and fees upon indigent defendants who cannot afford to pay in order to raise revenue, "cast[s] doubt on the

impartiality of the tribunal and erode[s] trust between local governments and their constituents." (Dear Colleague Letter, *supra*, at p. 2.)

Moreover, the State has numerous methods of raising funds through its general taxation powers that do not punish and infringe on the basic liberties of indigent defendants by placing the onus of funding the court system on those least capable of shouldering that burden. Given the hardship that mandatory imposition of these fees exacts on indigent defendants like Ms. Dueñas, it is clear that this irrational and counterproductive method of raising revenue constitutes an impermissible penalty on the basis of poverty. (*Bearden*, *supra*, 461 U.S. at p. 671.) To avoid constitutional infirmity, the court fee statutes must be interpreted to require courts to consider an indigent defendant's inability to pay. (See *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373-74 [describing the "canon of constitutional doubt" as a "cardinal principal" often applied to criminal statutes].) In the alternative, the court fee statutes are unconstitutional as applied to Ms. Dueñas, an indigent defendant.

b. Traditional Equal Protection Analysis Likewise Prohibits Imposing Mandatory Court Fees on Indigent Defendants.

Assessing the court fees to Ms. Dueñas also fails under traditional equal protection analysis: both the strict scrutiny demanded by *Antazo* and bare rationality review.

Imposing mandatory court fees on indigent defendants without consideration of inability to pay constitutes wealth-based discrimination. These fees penalize indigent defendants in

comparison to those with financial means: Defendants with the ability to pay the fees are not subject to the harsh and punitive consequences that impose "tremendous hardship" on the indigent. (See Subsection III.A.a.1.) As the California Supreme Court explained in *Antazo*, "[a]lthough a direction for confinement for default in payment of a fine may appear to apply equally to both the rich offender and the poor one, actually the former has the opportunity to escape [the penalty] while the right of the latter to pay what he cannot, is a hollow one." (3 Cal.3d at pp. 103-04; see also *Williams*, *supra*, 399 U.S. at p. 242 ["Since only a convicted person with access to funds can avoid [the consequences of nonpayment], the . . . statute in operative effect exposes only indigents to the[se] risk[s]."]; *Hernandez*, *supra*, 2017 WL 4341748, at *11, fn. 21 [reaffirming this principle in the context of immigration bond hearings].) Furthermore, because the State has numerous means of raising funds available to it, and revenue cannot rationally be generated from individuals who have no funds, "it is clear that this particular mechanism for promoting that state interest is not 'necessary' in the constitutional sense," nor is it appropriately tailored to its objective. (*Antazo*, *supra*, 3 Cal.3d at p. 114.)

Indeed, assessing court fees intended solely to generate revenue upon indigent defendants with no financial resources fails even under the most permissive standard of rationality review. Given that no threat "can force a [wo]man who is without funds, to pay a fine" (*ibid.*), compelling the court system to fund its operations by assessing fees to the indigent defendants least capable of paying

for it—and at high cost to their basic liberties and minimum subsistence—is wholly irrational and counterproductive.

B. The Restitution Fine (Pen. Code, § 1202.4) Is Constitutionally Impermissible As Written.

The restitution fine fares no better under equal protection and due process analysis. Although the restitution fine statute permits a sentencing judge to decline to impose the restitution fine if "compelling and extraordinary reasons" are shown on the record, it prohibits "inability to pay" from being "considered a compelling and extraordinary reason." (Pen. Code, § 1202.4(c).) This prohibition is unconstitutional on its face.

Like the court fees provisions, the restitution fine "invidious[ly] discriminat[es]" against Ms. Dueñas (*Griffin*, *supra*, 351 U.S. at p. 18), subjecting her to consequences that defendants with financial means do not face "simply because, through no fault of [her] own, [she] cannot pay [a] fine." (*Bearden*, *supra*, 461 U.S. at pp. 672-73.) The hardship to liberty and dignity as a consequence of the imposition of the restitution fine on indigent defendants is identical to that of the court fees statutes. (See Subsection III.A.a.1.)

The restitution fine differs from the court fees in only one relevant respect: its purpose, at least in some circumstances, is intended to punish a convicted defendant.[6] (*People* v. *Hanson* (2000) 23 Cal.4th 355, 361.) But the mere fact that a fine is intended to be

[6] Ms. Dueñas's restitution fine does not serve the traditional purpose of restitution to reimburse a direct victim for losses incurred. (cf. Pen. Code, § 1202.4(f)).

punitive does not insulate it from the demands of equal justice and fundamental fairness. (*Bearden*, *supra*, 461 U.S. at pp. 671-72.) Indeed, the *Bearden* Court acknowledged that "[t]he State clearly has an interest in punishment and deterrence" but found that "this interest can often be served fully by alternative means" (*id.* at pp. 671-72), concluding that "a sentencing court must inquire into the reasons for the failure to pay." (*Id.* at p. 672.) The Court explained that, "[t]o do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine." (*Id.* at pp. 672-73).

Imposing a punitive fine on a defendant who is unable to pay is just as irrational, inefficient, and counterproductive as imposing mandatory court fees designed to generate revenue for the State. (See Subsections III.A.a.2, III.A.b.) Ms. Dueñas's poverty exposes her to additional punishment that defendants with financial resources do not face: only defendants unable to pay the restitution fine are subject to the punitive consequences of non-payment. Imposing a fine on an indigent defendant, then threatening her basic liberties if she does not pay, cannot "force a [wo]man who is without funds, to pay a fine." (*Antazo*, *supra*, 3 Cal.3d at p. 114.)

The State has numerous alternative methods available to fulfill its objective of punishment, including community service, basing payment plans on ability to pay, and structured amnesty. (See *Bearden*, *supra*, 461 U.S. at p. 672 [requiring consideration of alternative means of effectuating the State's purpose]; *Tate*, *supra*, 401 U.S. at p. 400 & fn.5 [same]; *Antazo*, *supra*, 3 Cal.3d at pp. 114-15 [same].) Indeed, the State itself has admitted that alternatives exist to

its current debt collection system. (Cal. Legis. Analyst's Office, The 2017-18 Budget: Governor's Criminal Fine and Fee Proposals (2017) pp. 21-22 [recommending alternatives including considering ability to pay].) The text of the statute, by imposing a flat minimum restitution fine that may not be waived due to indigence, expressly forbids this required consideration of ability to pay and potential alternatives, and so is facially invalid.

Two appellate court decisions considering the restitution fine, *People v. Long* (1985) 164 Cal.App.3d 820 and *People v. Glenn* (1985) 164 Cal.App.3d 736, do not preclude this conclusion. *Long*, in which the Fifth District Court of Appeal rejected a due process challenge to the imposition of restitution without an ability-to-pay determination, did not provide the court with occasion to address the arguments regarding the deprivations of liberty or unequal treatment raised in this appeal. (*Long*, *supra*, 164 Cal.App.3d at pp. 826-28.) And *Glenn*, which cited *Antazo* for the principle that equal protection prohibits imprisoning an indigent defendant for failure to pay, did *not* hold that other deprivations of liberty could not also implicate constitutional concerns. (*Glenn*, *supra*, 164 Cal.App.3d at p. 740.) Rather, the court was bound by the fact that the defendant there had "cite[d] no authority, and [made] no showing that imposition of a restitution fine otherwise violates equal protection." (*Ibid.*; see also *People v. Goulart* (1990) 224 Cal.App.3d 71, 84 [same].) To the extent these appellate decisions hold that no penalty short of imprisonment may violate equal protection principles, they are incorrectly decided under the controlling California Supreme Court authority *Antazo* and have no bearing on federal law under *Bearden*

and its antecedents (*People v. Lessie* (2010) 47 Cal.4th 1152, 1167 [holding that U.S. and California Supreme Court decisions are binding on all California courts].)

Moreover, over thirty years has passed since either of these brief decisions was penned, and "[t]he need to be open to reassessment of ancient practices other than those explicitly mandated by the Constitution is illustrated by the present case since the greatly increased use of fines as a criminal sanction has made nonpayment a major cause" of deprivations of basic liberties of indigent defendants. (*Williams*, *supra*, 399 U.S. at p. 240.) Courts across the country have begun to reconsider whether longstanding practices burdening indigent criminal defendants comport with the Constitution, and virtually all have determined that they do not. (See p. 16.)

CONCLUSION

Ms. Dueñas asks this Court to vacate the superior court's order imposing $220 in court fees, and determine, based upon the court's finding that she is indigent, that the order be reduced to $0. In the alternative, Ms. Dueñas requests that this Court vacate and remand for consideration of her ability to pay and feasible alternatives.

Respectfully submitted,

DATED: November 7, 2017

By _____

KATHRYN EIDMANN
Attorney for Defendant-Appellant

CERTIFICATE OF COMPLIANCE

Under Rule 8.1012(d) of the California Rules of Court, I hereby certify that this brief contains 5,590 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare this brief.

By _____

Exhibit A

Opinion, *People v. Dueñas* (Super. Ct. Los Angeles County, Sept. 1, 2017, BR052381)

APPELLATE DIVISION OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. VELIA DUENAS, Defendant and Appellant.	BR 052831 Van Nuys Trial Court No. 5VY02034 **OPINION**

INTRODUCTION

Defendant Velia Duenas challenges the imposition of a $100 restitution fine (Pen. Code, § 1202.4), a $30 criminal conviction facilities assessment fee (Gov. Code, § 70373); and a $40 court operations assessment fee (Pen. Code, § 1465.8, subd. (a)(1)). She contends that the imposition of the above fine and fees, without an ability to pay hearing, violates the equal protection clauses of the federal and state Constitutions (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7). Defendant further claims that the trial court abused its discretion in finding no compelling and extraordinary reasons warranted the waiver of the restitution fine. We affirm.

BACKGROUND

On May 19, 2015, defendant was charged in a misdemeanor complaint with two counts of driving while her license was suspended for reasons specified in Vehicle Code section 14601.1, subdivision (a) (Veh. Code, § 14601, subd. (a), counts 1 and 2), driving

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without a valid license (Veh. Code, § 12500, subd. (a), count 3), and two counts of failing to appear in court (Veh. Code, § 40508, subd. (a), counts 4 and 5). Counts 1 and 2 alleged four prior convictions of driving with a suspended or revoked license in violation of Vehicle Code section 14601.1, subdivision (a), and, of the four, three were for violations that occurred within a three-month span.

At defendant's arraignment on May 19, 2015, she pled not guilty to the charges. On July 13, 2015, she withdrew her not guilty plea to count 1 and entered a plea of no contest. The remaining counts were dismissed pursuant to Penal Code section 1385. The probation and sentencing hearing was scheduled to take place on December 17, 2015, but it was continued for two months, at defense counsel's request.

On February 22, 2016, defendant was sentenced as follows: "Imposition of sentence is suspended for a period of 36 months on the following terms and conditions: 30 days county jail, no credit, 300 plus penalty and assessment or 9 days in county jail, consecutive. [¶] Do not drive any vehicle without a valid driver's license in your possession or without liability insurance in at least the minimum amounts required by law. [¶] Pay the following fines: *restitution fine of $150, a court security fee of $40, a criminal conviction facility [fee] of $30*, a probation revocation restitution fine, same amount. That's stayed." (Italics added.)

Defense counsel stated, "We ask the court to set an ability to pay hearing for the attorney fees and court fees. Ms. Duenas is on public benefits and she's currently homeless." The court responded, "She has 3 years to pay them. If it gets near the time where she can suffer a consequence as a result of not paying them, which would almost never be the case, we can set a hearing at that time."

Defense counsel added that "987 requires an ability-to-pay hearing before imposing attorney's fees." The court recognized defendant was entitled to a hearing on attorney fees and ordered her to meet with the financial evaluator prior to the hearing. It stated, "So all the other fines and fees are imposed. [¶] With respect to the attorney's fees, there is an ability-to-pay hearing 3 weeks from today's date."

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On March 17, 2016, the ability-to-pay hearing was held. On that date, defendant filed a "Notice of Motion in Support of Ability to Pay Hearing Regarding Court Fees," in which she "request[ed] that the court consider her poverty in deciding whether she is too poor to pay $220 in fees" and that the court waive attorney fees.

In her supporting declaration, defendant stated, among other things, that she received "government benefits in the form of cash aid and food stamps"; her husband is unemployed; due to her cerebral palsy diagnosis, she is unemployed; she and her family are "basically homeless"; her limited funds are used to care for her two small children; the service on her cell phone is regularly disconnected because she cannot afford the $40 monthly payment; she has no bank account or credit cards; and she cannot afford basic necessities for her family.

At the ability-to-pay hearing, defense counsel argued the lack of an ability-to-pay component in Penal Code section 1202.4, Government Code section 70373, and Penal Code section 1465.8, subdivision (a)(1), rendered them "unconstitutional under *Fuller*[1]." The court overruled defendant's "constitutional challenges," finding the imposition of those assessments was mandatory. Regarding the restitution fine, the court stated that defendant's "compelling and extraordinary" circumstances could be considered only if an amount above the minimum had been imposed, which was not done here, and that, in any event, inability to pay did not qualify as a "compelling and extraordinary" reason under the statute. The court, however, did consider defendant's financial circumstances in ordering that she was not required to pay attorney fees.

DISCUSSION

Appealability

The People contend because the appeal is taken from the court's order "assessing $220 in court fees and restitution fine," which was issued on February 22, 2016, the instant appeal filed more than 30 days later, on April 15, 2016, should be dismissed as untimely.

The record indicates on February 22, 2016, the matter was called for sentencing and the court ordered defendant to pay, inter alia, the restitution fine (Pen. Code, § 1202.4), criminal

[1] *Fuller v. Oregon* (1974) 417 U.S. 40.

conviction assessment (Gov. Code, § 70373), and court operations assessment (Pen. Code, § 1465.8, subd. (a)(1)). Defense counsel specifically requested an ability-to-pay hearing for *both* attorney fees and the disputed court costs. At the next hearing on March 17, 2016, the court addressed the issue of whether defendant was entitled to such a hearing, other than for attorney fees, and, in overruling defendant's "constitutional challenges," the court determined she was not.

Defense counsel initially raised the constitutional challenge to the statutes on the day of sentencing, but the court did not rule on this specific objection until March 17, 2016. Thus, this appeal is timely taken "[f]rom any order made after judgment affecting . . . [defendant's] substantial rights" (Pen. Code, § 1466, subd. (b)(2); Cal. Rules of Court, rule 8.853(a) ["a notice of appeal must be filed within 30 days after the rendering of judgment or the making of the order being appealed"]), and we can proceed to consider the merits of defendant's claims.

Equal Protection Violation

The equal protection clause provides "'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, and property and in their pursuit of happiness.' [Citation.]" (*People v. Wutzke* (2002) 28 Cal.4th 923, 943.)

"'The concept of equal protection recognizes that persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. [Citation.] Accordingly, "'[t]he first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner.'" [Citation.]' [Citation.]" (*People v. Martinez* (2016) 5 Cal.App.5th 234, 243, italics omitted.) If that showing is made, a challenged law is then reviewed based on a level of scrutiny that depends on the nature of the distinctions the law makes. (*People v. Shields* (2011) 199 Cal.App.4th 323, 333.) A law that creates a suspect classification or impinges on the exercise of a fundamental right is subject to strict scrutiny and will be upheld only if it is necessary to further a compelling state interest. (*People v. Silva* (1994) 27

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Cal.App.4th 1160, 1167.) All other laws will be upheld, if they bear a rational relationship to a legitimate state purpose. (*Ibid.*)[2]

The rational basis test applies to defendant's challenge in this matter because the statutes at issue do not burden her right to effectively access the court nor any other fundamental right, and neither criminal defendants nor indigents constitute suspect classes. (*City of New Orleans v. Dukes* (1976) 427 U.S. 297, 303 [unless classification burdens fundamental personal rights or draws distinction based on a suspect class, law is valid if rationally related to government interest]; *Harris v. McRae* (1980) 448 U.S. 297, 323 [indigents not a suspect class]; *People v. Yearwood* (2013) 213 Cal.App.4th 161, 178 [prisoners not a suspect class].)

As for the first prong of the inquiry, defendant cannot demonstrate that the challenged statutes—Penal Code section 1204.4, Government Code section 70373, and Penal Code section 1465.8—treat indigent and non-indigent defendants convicted of the same crimes differently. She argues an indigent defendant like herself who cannot pay the fees will suffer the negative consequences of failing to pay them, while a non-indigent defendant who has the ability to pay will not. Defendant's comparison is flawed. Here, the challenged laws do not draw a distinction between defendants based on wealth; all defendants are treated the same. Both indigent and non-indigent defendants convicted of the same crime face the same punishment, including the requirement to pay mandatory fees.[3]

Defendant's claim also fails with respect to the second prong of the test. The fee requirement is rationally related to the state's interest in maintaining adequate funding for court facilities and operations. Contrary to defendant's argument, indigency does not undercut the legitimacy of this purpose because it does not equate to an absolute inability to pay. Requiring indigent defendants to pay assessments, even if they could only do so over time and with

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[2]We note defendant does not clearly identify the appropriate level of scrutiny. Initially, she contends the fees "constitute a serious deprivation of liberty," but then asserts "the state has no rational interest in collecting court fees from indigent defendants." (Capitalization omitted.)

[3]An equal protection claim may also exist where a law or policy that is neutral on its face has a disproportionate or "disparate" impact on an identifiable group, but in such a case, it must be proven that there was an intent to discriminate. (*Village of Arlington Heights v. Metropolitan Housing Dev. Corp.* (1977) 429 U.S. 252, 264-266.) Defendant does not assert such a discriminatory intent.

greater effort, would nevertheless promote a legitimate state interest in maintaining funding for the criminal justice system.

The restitution fine, which is punitive, is reasonably related to the state's interest in rehabilitation and reformation of offenders because it impresses upon them that there are financial consequences to their criminal conduct. Therefore, to exempt indigent offenders would convey that punishment for criminal conduct is not the same for everyone and that the law is applied with greater leniency based on poverty.

Defendant relies heavily on *In re Antazo* (1970) 3 Cal.3d 100, 110 (*Antazo*) and several other Supreme Court cases[4] to argue that the imposition of fees without consideration of ability to pay is an equal protection violation. In *Antazo*, the petitioner challenged the constitutionality of Penal Code sections 1205 and 13521, which authorized the imposition of a fine and the levy of a penalty assessment, as well as imprisonment pending payment. (*Id.* at pp. 104-105.) He was confined to jail pursuant to a probation order requiring him to pay, as a condition of probation, the fine and assessment, or in lieu of payment thereof to be imprisoned in jail for one day for each $10 of the unpaid amount. (*Id.* at p. 104.) The *Antazo* court identified its inquiry as "whether imprisonment of an indigent convicted defendant for nonpayment of a fine is 'necessary to promote a compelling governmental interest, ...' [Citation.]" (*Id.* at p. 112.)

Unlike the petitioner in *Antazo*, defendant has not suffered, nor does she risk, confinement to jail as a result of her inability to pay any of the assessments and fine that were imposed.

Defendant argues her inability to pay the fees leads to the deprivation of liberties, such as the freedom of movement and the opportunity to seek employment and obtain economic

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[4]Notably, in *Griffin v. Illinois* (1955) 351 U.S. 12 (*Griffin*), the Supreme Court held that denying petitioners' requests for a free transcript to obtain appellate review of their convictions was a denial of due process, because the right to appellate review was akin to the fundamental right to defend oneself in trial court. (*Id.* at pp. 18-19.) It recognized, "Appellate review has now become an integral part of the [state] trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations. [Citations.]" (*Id.* at p. 18.) Unlike the petitioners in *Griffin*, defendant here has failed to demonstrate that the imposition of assessments and fines deprives her of a fundamental right.

self-sufficiency. Certainly, negative consequences, such as imposition of a late penalty, garnishment of wages or other debt collection activity, suspension of driving privileges, and denial of discretionary expungement, can flow from defendant's failure to pay mandatory fine and fees. But, we agree with the People that the collateral consequences of nonpayment are not comparable to the deprivation of liberty that results from incarceration, the denial of a litigant's right to judicial appellate review, or the impingement of some other fundamental right. Simply put, the imposition of mandatory fees and fines following a conviction does not deny an indigent defendant due process of law, and there is no constitutional right to be free of any and all financial obligations and consequences. (See *U.S. v. Kras* (1973) 409 U.S. 434, 447.)[5]

Our conclusion is in line with *People v. Glenn* (1985) 164 Cal.App.3d 736 (*Glenn*) and *People v. Long* (1985) 164 Cal.App.3d 820 (*Long*). The *Glenn* court held imposition of a mandatory restitution fine (Pen. Code, § 1204.4) regardless of the defendant's present ability to pay did not constitute an invidious discrimination based on wealth in violation of the equal protection clause since imprisonment for failure to pay the fine is prohibited. (*Glenn*, *supra*, 164 Cal.App.3d at p. 740.) The *Long* court similarly rejected the contention that the imposition of the fine on an indigent defendant was a violation of due process, emphasizing, "'[a]n indigent defendant cannot be imprisoned because of his inability to pay a fine'" (*Long*, *supra*, 164 Cal.App.3d at pp. 826-827), and that "[t]he only detriment defendant will suffer is a possible execution against whatever nonexempt assets he may have to satisfy his delinquent indebtedness to the state" (*id.* at p. 828).[6]

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[5]Defendant contends the "underlying conviction for driving on a suspended license derives from her inability to pay previous fines that she incurred as a juvenile," and "[s]uch fines and fees perpetuate a cycle of incarceration and impoverishment." For purposes of our review, the equal protection analysis is limited to the imposition of fees in the instant case.

[6]Defendant makes several perfunctory claims on appeal which are undeveloped. In a footnote in her opening brief, she argues that because she did not receive notice of the imposition of fees prior to her plea she was deprived of procedural due process. She also appears to challenge the trial court's statutory interpretation of Government Code section 70373 and Penal Code section 1465.8, but fails to conduct the proper analysis of such a claim. She concludes her arguments regarding the assessments by stating, "In the alternative, the statutes are unconstitutional *as applied* to Ms. Duenas, an indigent defendant." (Italics added.) As the above arguments are not supported by sufficient analysis and

Abuse of Discretion

We also conclude the court did not abuse its discretion in finding there were no compelling or extraordinary circumstances meriting a waiver of the restitution fine. Penal Code section 1202.4, subdivision (b) provides, "In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, *unless it finds compelling and extraordinary reasons* for not doing so and states those reasons on the record." (Italics added.) The only showing made by defendant was in regard to her inability to pay, which under subdivision (c),[7] did not qualify as a "compelling and extraordinary reason[]" justifying a waiver. Her inability to pay could only be considered by the court had it sought to impose an amount above the minimum, but it did not do so here.

DISPOSITION

The court's March 17, 2016, order denying defendant's request for an ability-to-pay hearing on the restitution fine (Pen. Code, § 1202.4), the criminal conviction facilities assessment (Gov. Code, § 70373), and the court operations assessment (Pen. Code, § 1465.8) is affirmed.

Richardson, J.

We concur:

Kumar, Acting P. J.

Ricciardulli, J.

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relevant legal authority, we pass them without further consideration. (See *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.)

[7]"The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine pursuant to paragraph (1) of subdivision (b). . . ." (Pen. Code, § 1204.2, subd. (c).)

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am employed by Public Counsel in Los Angeles California. I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is Public Counsel, 610 S. Ardmore Ave., Los Angeles, CA 90005.

On November 7, 2017, I served a true copy of the following document:

APPELLANT'S OPENING BRIEF

on the following persons:

Appellate Division of the
Superior Court of Los Angeles
Stanley Mosk Courthouse, 6th Floor
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Hon. Eric P. Harmon
Judge of the Superior Court
Van Nuys Courthouse
14400 Erwin Street Mall, Dept. 113
Van Nuys, CA 91401

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Los Angeles, CA 90013

and also sent a true copy to Defendant-Appellant Velia Dueñas at 3725 Fushia Ct., Bakersfield, CA 93313

by UNITED STATES MAIL: By enclosing the documents in a sealed envelope or package address to the persons at the address above and placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage prepaid.

The documents were sent from Los Angeles, California, by First Class Mail.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

This declaration was executed on the date of November 7, 2017, at Los Angeles, California.

Shahrad Ardaghi
Declarant