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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN. F. WEISHEITINGER,

Defendant and Appellant.

A124764

(Sonoma County
Super. Ct. No. SCR-543233)

Defendant entered a plea of no contest to one count of identification theft (Pen. Code, § 530.5, subd. (a)), pursuant to a negotiated disposition. The trial court sentenced the defendant to three years in state prison and ordered him to pay \$34,489.56 in restitution. On appeal, defendant contends that the trial court erred by denying him the right to a hearing on the amount of restitution; respondent concedes the error. We accept the concession, reverse the order of restitution, and remand the matter to the trial court in order for a restitution hearing to be conducted.

I.
BACKGROUND

Pursuant to a negotiated disposition, defendant pleaded no contest to identification theft, and the prosecution dismissed four other felony counts and agreed not to file further charges arising out of defendant's court of conduct. The court sentenced defendant to the aggravated term of three years in state prison, and, based solely upon a recommendation in the probation report, ordered him to pay restitution in the amount of \$34,489.56. Defense counsel requested that the court reserve jurisdiction over the issue of restitution,

rather than making an order at that time; the trial court declined that request. The amount of restitution ordered was based upon a recommendation contained in the probation report, which in turn was based solely upon a statement in the police report. The victim was advised by the probation department of his right to file a claim for restitution but the victim failed to do so. The victim also did not respond to telephone calls made to him by the probation officer. Defense counsel subsequently placed the matter back on calendar to address the issue of restitution and again requested a hearing on the matter, indicating that he had not received any discovery regarding the amount due. Counsel also requested clarification as to whom restitution should be paid, as the indicated victim of the identity theft (defendant's father) was actually not out any money. Instead, unknown credit card companies suffered the monetary loss. The prosecutor did not object to the setting of a restitution hearing. The trial court agreed that defendant was entitled to a hearing, but declined to conduct one as it believed it had lost jurisdiction over the matter due to the previous imposition of sentence. This timely appeal followed.

II. DISCUSSION

Respondent concedes that the trial court erred by not conducting a restitution hearing. Under Penal Code section 1202.4, subdivision (f)(1), “[t]he defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution.” (Pen. Code, § 1202.4, subd. (f).) As to the trial court’s concern that it had lost jurisdiction to order such a hearing at the point in time that it realized it was necessary (due to sentence having been previously imposed), Penal Code section 1202.4, subdivision (f) indicates that if the amount of restitution cannot be determined at the time of sentencing, the court shall retain jurisdiction over a person subject to a restitution order until such time as the losses may be determined. In light of these provisions, considered

together, we agree with the parties that the matter should be returned to the trial court so that a victim restitution hearing might be conducted.¹

III.
DISPOSITION

The order of the trial court setting restitution in the amount of \$34,489.56 is reversed and the matter is remanded for the trial court to conduct a victim restitution hearing. In all other regards, the judgment is affirmed.

Sepulveda, J.

We concur:

Ruvolo, P. J.

Rivera, J.

¹ We agree with respondent that there is no authority for the Department of Corrections and Rehabilitation, rather than the trial court, to conduct the restitution hearing, as the trial court suggested.