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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. NHAT DINH MAI, Defendant and Appellant.	H026731 (Santa Clara County Super. Ct. No. CC247793)

Pursuant to a negotiated plea, defendant was sentenced to a state prison term of 40 years to life. On appeal, he contends the trial court's order that he submit to DNA testing under Penal Code section 296 violates his Fourth Amendment rights. He further contends that the imposition of a $10,000 restitution fine violated the terms of his plea agreement. We affirm.

Background

Defendant and his co-defendant Nguyen L. Nguyen entered into negotiated plea agreements as a "packaged deal." Defendant pleaded guilty to one count of murder, two counts of attempted murder, and one count of assault with a deadly weapon. (Pen. Code, §§ 187, 664, subd. (a), 245, subd. (a)(1).) He also admitted amended firearm use allegations attached to certain counts. (Pen. Code, § 12022.53, subd. (b).) Defendant agreed to be sentenced to a total prison term of 40 years to life and the prosecutor agreed

to amend the firearm use allegations and to dismiss one count of shooting at an occupied motor vehicle and related allegations. In describing the plea agreement, the prosecutor did not mention the payment of a restitution fine. Before taking defendant's plea, the trial court advised defendant, "you could also be required to pay . . . into a general restitution fund up to $10,000 with a minimum of [$]200." The court advised defendant that he "could be required to provide two specimens of blood and saliva[.]" Defendant then entered his guilty plea. The trial court did not advise defendant pursuant to Penal Code section 1192.5 of his right to withdraw his plea under certain conditions.

The probation report recommendations included ordering defendant to provide two blood samples and one saliva sample pursuant to Penal Code section 296 and the imposition of a restitution fine of $10,000 under the formula permitted by Penal Code section 1202.4, subdivision (b) and the suspended imposition of an equal amount under Penal Code section 1202.45. The trial court sentenced defendant to 40 years to life in state prison. The trial court also imposed a restitution fund fine of $10,000 and ordered that defendant provide DNA samples as required by Penal Code section 296.

Samples for DNA Database

Defendant contends that requiring him to submit DNA samples to the state's DNA database pursuant to Penal Code section 296 constitutes a warrantless search and seizure that violates the Fourth Amendment right to be free of unreasonable government intrusion.[1] He argues, defendant, "even though he is a prisoner, has a reasonable expectation of privacy in the integrity of his body." He argues that a search pursuant to section 296 is conducted without a warrant and without probable cause and thus is per se unreasonable. He argues that searches pursuant to section 296 do not serve a special need beyond the normal need for law enforcement.

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[1] Although defendant did not raise a Fourth Amendment claim in the trial court, his claim is cognizable on appeal since it involves a pure issue of law which rests on undisputed facts. (*People v. Yeoman* (2003) 31 Cal.4th 93, 118.)

It is clear that the collection of a blood specimen is a search within the meaning of the Fourth Amendment because it involves an intrusion into an individual's body. (See *Skinner v. Railway Labor Executives' Assn.* (1989) 489 U.S. 602, 616.) While a compelled intrusion into an individual's body for blood may infringe upon protected privacy interests that society recognizes as legitimate because of the societal value placed upon bodily integrity (see *Skinner v. Railway Labor Executives' Assn., supra,* 489 U.S. 602, 616; see also *Schmerber v. California* (1966) 384 U.S. 757, 767), we conclude that a convicted felon does not have any legitimate expectation of privacy regarding his DNA characteristics, as revealed by chemical analysis, that may be used by law enforcement authorities to identify him as a unique individual. Undisputedly, law enforcement authorities have a legitimate interest in accurately identifying an individual who has entered the criminal justice system by felony conviction, especially in light of the serious problem of recidivism. Scientific advances have provided the means to more accurately identify an individual through DNA analysis. A convicted felon might be able to assume a new name or alter his appearance but would not be able to change his DNA.

"The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as 'legitimate.' [Citation.]" (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 654.) This court and others have recognized that, due to conviction, convicted felons do not have a reasonable expectation of privacy in their identity. (See *People v. Adams* (2004) 115 Cal.App.4th 243, 259; *People v. King* (2000) 82 Cal.App.4th 1363, 1374-1375.) The Fourth Amendment simply does not protect a convicted felon's subjective expectation of privacy in his DNA profile to the extent it is used by law enforcement to identify him as an individual.

Defendant recognizes that this court has recently rejected his argument in *People v. Adams, supra,* 115 Cal.App.4th at pp. 255-259.) Defendant acknowledges that other courts have rejected similar claims. (See, e.g., *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 505 [noting consistent rejection of similar challenges by courts in other

jurisdictions], *People v. King, supra,* 82 Cal.App.4th at 1370 [noting defendant's failure to cite any case against providing blood samples pursuant to section 296].) Defendant asserts that these cases are wrong. Defendant argues that *Adams* "rests on a false premise . . . that the Supreme Court cases regarding the special needs doctrine are inapposite since 'convicted criminals do not enjoy the same expectation of privacy that non-convicts do.' (*Adams, supra*, 115 Cal.App.4th at p. 258.)" Defendant argues, "searches pursuant to section 296 do not serve a special need beyond the normal need for law enforcement."

In *Adam*s, we followed *Alfaro* and *King*, concluding that section 296 served a compelling governmental interest that outweighed the diminished expectation of privacy of a person convicted of one of the enumerated crimes. (*Adams*, *supra*, 115 Cal.App.4th at pp. 257-258.) We rejected the assertion that "special needs" beyond the normal law enforcement need must be identified for an exception to the individualized suspicion requirement. (*Id*. at p. 258.) We distinguished two United States Supreme Court cases *Indianapolis v. Edmond* (2000) 531 U.S. 32 and *Ferguson v. Charleston* (2001) 532 U.S. 67, which involved searches of the general public rather than searches of convicted felons, who "do not enjoy the same expectation of privacy that non-convicts do." (*Adams*, *supra*, 115 Cal.App.4th at p. 258.)

We agree with *Adams.* We further observe that the "special needs" analysis may be understood as a more particular application of the traditional balancing test of reasonableness, which is ultimately the sin qua non of the Fourth Amendment. Absent an emergency, search warrants are ordinarily required for searches involving intrusions into the human body. (*Schmerber v. California, supra,* 384 U.S. 757, 770.) However, "the ultimate measure of the constitutionality of a governmental search is 'reasonableness.' " (*Vernonia School Dist. 47J v. Acton*, *supra*, 515 U.S. at p. 652.) "[T]he reasonableness of a search is determined 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.' [Citation.]" (*U.S. v. Knights* (2001) 534

U.S. 112, 118-119.) "Reasonableness . . . is measured in objective terms by examining the totality of the circumstances." (*Ohio v. Robinette* (1996) 519 U.S. 33, 39.)

"The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. [Citations.]" (*Bell v. Wolfish* (1979) 441 U.S. 520, 559 [upholding visual body-cavity inspections of inmates without individualized suspicion of wrongdoing based upon unique security interests of detention facility].)

"[A] showing of individualized suspicion is not a constitutional floor, below which a search must be presumed unreasonable. [Citation.] In limited circumstances, where the privacy interests implicated by the search are minimal, and where an important governmental interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion." (*Skinner v. Railway Labor Executives' Ass'n.*, *supra*, 489 U.S. at p. 624.)

Where a person has already been convicted of a felony and, consequently, law enforcement authorities have a legitimate interest in an accurate record of that individual's identity, the concept of individualized suspicion underlying the warrant and probable cause requirements has no role to play. The blood specimen required by Penal Code section 296 is not taken to discover evidence of suspected criminal wrongdoing. Since the Act already provides for procedural protections and, in effect, limits the permissible use of blood specimens to identification or exclusion purposes by law enforcement agencies (see Pen. Code, §§ 295.1, subd. (a), 299.5, subds. (a), (b), (f), and (g)(1)), demanding a warrant and probable cause to believe some other crime had

occurred adds no practical protection but does completely frustrate the legitimate governmental objective.

The critical question, in our view, is whether the means used to take the saliva and blood specimens are reasonable within the meaning of the Fourth Amendment. (Cf. *Schmerber v. California*, *supra*, 384 U.S. at p. 768 [means and procedures employed in taking blood must respect relevant Fourth Amendment standards of reasonableness].) Blood tests are "commonplace in these days of periodic physical examination and experience with them teaches that the quantity of blood extracted is minimal, and that for most people the procedure involves virtually no risk, trauma, or pain." (*Schmerber v. California*, *supra*, 384 U.S. at p. 771, fn. omitted.) Here, the Act provides: "The withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for purposes of this section." (Pen. Code, § 298, subd. (b)(2).) Defendant does not claim, and the record does not show, that any saliva or blood test performed pursuant to the court's order implementing section 296 was, or would be, administered in an unreasonable manner.

We conclude any intrusion of defendant's legitimate privacy interests occasioned by the taking of saliva and blood specimens is minimal since, as a convicted felon he had no reasonable expectation of keeping his identity private from law enforcement and the statute provided the blood to be withdrawn in a reasonable manner and basically limited use of the blood specimen to identification purposes by law enforcement and this minimal intrusion was justified by the legitimate governmental interest in having an accurate record of his identity as a convicted felon. (Cf. *People v. Adams*, *supra*, 115 Cal.App.4th 243, 259.) The fact that his DNA and forensic identification profile will be entered into a governmental databank for future law enforcement purposes does not render the taking of saliva and blood for identification analysis unreasonable under the Fourth Amendment. This is no different than law enforcement considering photographs

or fingerprints of known convicts that are part of their criminal record when investigating other crimes.

Restitution Fine

Defendant contends, "The imposition of a $10,000 restitution fine breached the terms of appellant's plea bargain and violated his due process rights." Initially, respondent agreed, "it is clear that although appellant was advised by the court that a consequence of his plea was a restitution fund fine, there is no evidence the plea bargain itself included a restitution fund fine." This court asked for and received supplemental briefing from the parties in light of *People v. Dickerson* (2004) 122 Cal.App.4th 1374, rehearing denied Nov. 2, 2004, review filed Nov. 16, 2004. Respondent now argues that *Dickerson* requires a rejection of defendant's claim because it appears " 'the parties at least implicitly agreed that additional punishment in the form of statutory fines and fees would be left to the discretion of the sentencing court.' " Defendant argues, "*Dickerson* violates the rule of *stare decisis* because it fails to adhere to the higher court's decision in *Walker* despite identical facts [and], even if *Dickerson* was correctly decided, appellant's case is factually distinguishable from it and hence warrants a different result."

Penal Code section 1202.4 mandates judicial imposition of both a restitution fund fine (subd. (a)(3)(A)) and restitution to the crime victim (subd. (a)(3)(B)) whenever a person is convicted of a crime. The trial court shall impose the restitution fine "unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record." (Subds. (b), (c).) In the absence of extraordinary reasons, a minimum fine of $200 is mandatory after a felony conviction (subds. (b)(1), (c), (d)) "even in the absence of a crime victim." (*People v. Hanson* (2000) 23 Cal.4th 355, 362.)[2] The sentencing

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[2] We note that the California Supreme Court has repeatedly described the minimum restitution fine as mandatory. (*People v. Hanson*, *supra*, 23 Cal.4th at p. 362; *People v. Walker* (1991) 54 Cal.3d 1013, 1027 (*Walker*).) However, presumably because the fine need not be imposed in extraordinary cases and the amount is discretionary, the court has

court has discretion to impose a fine of up to $10,000 in light of all relevant factors. "Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required." (Subd. (d).)

In *Walker*, *supra*, 54 Cal.3d 1013, the California Supreme Court resolved a conflict "over the proper means of remedying the erroneous imposition of a restitution fine." (*Id.* at p. 1018.) In that case the defendant agreed to a plea bargain whereby one of two felony charges would be dropped and he would receive a five-year prison sentence. (*Id.* at pp. 1018-1019.) The trial court advised the defendant that the maximum legal penalties were seven years in prison and a fine of up to $10,000. (*Id.* at p. 1019.) The trial court was apparently referring to the discretionary $10,000 penal fine generally available under Penal Code section 672[3] after any felony conviction for which no other fine was prescribed. (*Id*. at p. 1019.) The sentencing court in *Walker* did not advise the defendant of the mandatory restitution fine of at least $100 and no more than $10,000. (*Ibid.*) Immediately after the guilty plea, the court sentenced the defendant to five years in prison. A probation report prepared before the plea recommended a $7,000 restitution fine. The court imposed a $5,000 restitution fine without objection by the defendant. (*Ibid.*)

The California Supreme Court explained that two "related but distinct legal principles" were involved. (*Walker*, *supra*, 54 Cal.3d at p. 1020.) One was "'a judicially declared rule of criminal procedure'" (*id.* at p. 1022) that, before entering a guilty plea, a

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also characterized the fine as a "discretionary sentencing choice" for purposes of the waiver doctrine. (*People v. Tillman* (2000) 22 Cal.4th 300, 303; *People v. Smith* (2001) 24 Cal.4th 849, 853.)

[3] Penal Code section 672 states: "Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars ($1,000) in cases of misdemeanors or ten thousand dollars ($10,000) in cases of felonies, in addition to the imprisonment prescribed."

defendant be judicially advised "of the direct consequences of the plea." (*Id.* at p. 1020.) The court concluded that "[a] possible $10,000 restitution fine constitutes such a direct consequence. Thus, before taking any guilty plea a trial court should advise the defendant of the minimum $100 and maximum $10,000 restitution fine." (*Id.* at p. 1022.) The court further concluded that such an error may be forfeited[4] by the lack of a timely objection. "[W]hen the only error is a failure to advise of the consequences of the plea, the error is waived if not raised at or before sentencing." (*Id.* at p. 1023.) The court found that this error was waived. (*Id.* at p. 1029.)

The other legal principle was that "the parties must adhere to the terms of a plea bargain." (*Walker, supra,* 54 Cal.3d at p. 1020.) "The punishment may not significantly exceed that which the parties agreed upon." (*Id.* at p. 1024; cf. § 1192.5.)[5] The court concluded that a restitution fine "qualifies as punishment for this purpose. Accordingly, the restitution fine should generally be considered in plea negotiations." (*Walker*, *supra*, at p. 1024.)

Regarding when a defendant might forfeit a contention that the punishment exceeded the bargain, the court held that, if a defendant was given a Penal Code section 1192.5 admonition[6] "and the defendant does not ask to withdraw the plea or otherwise

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[4] *Walker* talked in terms of waiver, but "forfeiture" is technically more correct. *People v. Simon* (2001) 25 Cal.4th 1082 explained at page 1097, footnote 9: "In this context, as in others, the terms 'waiver' and 'forfeiture' long have been used interchangeably. As the United States Supreme Court has explained, however, '[w]aiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the "intentional relinquishment or abandonment of a known right." [Citations.]' (*United States v. Olano* (1993) 507 U.S. 725, 733 . . . .)"

[5] Penal Code section 1192.5 states in paragraph two: "Where the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant, except as otherwise provided in this section, cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea."

[6] Paragraph three of Penal Code section 1192.5 requires a court to advise a defendant "prior to the making of the plea that (1) its approval is not binding, (2) it may,

object to the sentence, he has waived the right to complain of the sentence later." (*Walker, supra,* 54 Cal.3d at p. 1026.) On the other hand, "[a]bsent compliance with the section 1192.5 procedure, the defendant's constitutional right to the benefit of his bargain is not waived by the mere failure to object at sentencing." (*Id.* at p. 1025.) *Walker* concluded that since the defendant in that case had not received a section 1192.5 advisement, he was able to assert on appeal that "the $5,000 restitution fine was a significant deviation from the negotiated terms of the plea bargain." (*Id*. at p. 1029.)[7] The remedy for this violation was to reduce the restitution fine to the mandatory minimum, then $100, rather than remanding the case for a redetermination of the fine. (*Id.* at pp. 1028-1030.)

Later cases clarify the application of *Walker*. In deciding whether the punishment exceeds the bargain, a court must first establish the terms of the bargain. In companion cases, the California Supreme Court explained: "In *Walker*, the offense to which the defendant had agreed to plead guilty carried a potential seven-year sentence and a $10,000 punitive fine, but under the negotiated plea agreement the defendant was to receive a five-year term of imprisonment and no punitive fine. At the subsequent sentencing hearing, the trial court imposed the agreed-upon five-year sentence but also a substantial ($5,000) restitution fine. [¶] In concluding that the imposition of such a substantial fine constituted a violation of the plea agreement in *Walker*, we implicitly found that the defendant in that case reasonably could have understood the negotiated plea agreement to signify that no substantial fine would be imposed." (*In re Moser*

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at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so."

[7] *Walker* does contemplate that insignificant deviations from the plea agreement do not violate it. (*Walker*, *supra*, 54 Cal.3d at p. 1024.) The opinion warned, however, that, "Courts should generally be cautious about deeming nonbargained for punishment to be insignificant." (*Id.* at p. 1027, fn. 3.)

(1993) 6 Cal.4th 342, 356 (*Moser*); *People v. McClellan* (1993) 6 Cal.4th 367, 379-380 (*McClellan*).)

In *Moser*, the court concluded that the parole term was not a subject of the plea agreement. "Based solely upon the record of the plea proceedings, it would appear that the indicated length of the parole term was not a part of the plea agreement, but simply constituted a misadvisement by the trial court. As set forth above, prior to accepting petitioner's plea of guilty, the trial court recited on the record the terms of the parties' plea agreement, noting that petitioner had agreed to plead guilty to the lesser charge of second degree murder in exchange for the People's agreement to forego a trial on the first degree murder charge and to dismiss the firearm-use allegation. The trial court inquired of petitioner whether the court's statement was an accurate recitation of the plea agreement, and he responded affirmatively. Nothing in the record indicates that the length of the parole term, improperly described by the trial court, was an element of the parties' plea negotiations and resulting agreement so as to render imposition of the lifetime period of parole mandated by statute a violation of the plea agreement." (*Moser*, *supra*, 6 Cal.4th at p. 356.) The court noted that lifetime parole is mandatory for those convicted of second degree murder and accordingly would not be subject to negotiation. "[I]f (as appears from the record) the subject of parole was not encompassed by the parties' plea negotiations, imposition of the statutorily mandated term of parole would not constitute a violation of the parties' plea agreement." (*Id.* at p. 357.) The court remanded the case for further proceedings on the question "whether the length of petitioner's term of parole was an element of the plea negotiations." (*Id.* at p. 358.)

In *McClellan*, the court noted that "[t]he statutory requirement of sex offender registration was not mentioned by the parties or by the court" when the trial court recited the plea agreement. (*McClellan*, *supra*, 6 Cal.4th at p. 379.) Further, the defendant did not argue that registration was a subject of the plea negotiations. (*Ibid.*) Registration is mandatory and "not a permissible subject of plea agreement negotiation." (*Id.* at p. 380.)

"Because the registration requirement is statutorily mandated for every person convicted of assault with intent to commit rape, that requirement was an inherent incident of defendant's decision to plead guilty to that offense and was not added 'after' the plea agreement was reached." (*Ibid.*) It is not a violation of a plea agreement if "a statutorily mandated consequence of a guilty plea is not embodied specifically within the terms of a plea agreement." (*Id.* at p. 381.)

Walker held that "[t]he court should always admonish the defendant of the statutory minimum $100 and maximum $10,000 restitution fine as one of the consequences of *any* guilty plea, and should give the section 1192.5 admonition whenever required by that statute." (*Walker*, *supra*, 54 Cal.3d at p. 1030.) *Walker* recommended that "[c]ourts and the parties should take care to consider restitution fines during the plea negotiations." (*Ibid*.) The court "implicitly found that the defendant *in that case* reasonably could have understood the negotiated plea agreement to signify that no substantial fine would be imposed." (*In re Moser*, *supra*, 6 Cal.4th at p. 356, italics added; *McClellan*, *supra*, 6 Cal.4th at pp. 379-380.)

But *Walker* should not be understood as finding that the restitution fine has been and will be the subject of plea negotiations in every criminal case. "The parties to a plea agreement are free to make any lawful bargain they choose . . . ." (*People v. Buttram* (2003) 30 Cal.4th 773, 785.) *Walker* does not prohibit criminal defendants from striking whatever bargains appear to be in their best interests, including leaving the imposition of fines to the discretion of the sentencing court.

The First District Court of Appeal (Div. Five) recognized this limitation in *People v. DeFilippis* (1992) 9 Cal.App.4th 1876, where the court held "that if a plea bargain does not specify punishment and the defendant is not advised of an obligatory restitution fine, the imposition of a restitution fine above the statutory minimum violates only the right to be advised as to the direct consequences of the plea, not the plea bargain itself, and thus the error is waived if not raised at or before sentencing." (*Id.* at p. 1878.) In that case the

defendant entered a plea bargain that "did not specify any punishment." (*Ibid.*) On appeal he complained about the trial court's imposition of a restitution fine of $5,000. The appellate court concluded, "Absent any agreement as to punishment, the imposition of the restitution fine did not violate the plea bargain" and the waiver rule applied. (*Id.* at p. 1879.)

Here, the court did not recite that there was any express agreement that either no restitution fine would be imposed, the minimum fine would be imposed, or a fine pursuant to the statutory formula would be imposed. In our view, this simply shows that the parties left unresolved the imposition or amount of any fine. "[I]t would appear that [this topic] was not a part of the plea agreement." (*Moser*, *supra*, 6 Cal.4th 342, 356.) Indeed, when asked by the court, defendant denied that any promises had been made other than fixing the prison term, amending the firearm use allegations, and dismissing one count of shooting at an occupied motor vehicle. The court's omission of a term cannot transform it "into a term of the parties' plea agreement." (*McClellan*, *supra*, 6 Cal.4th 367, 379; italics omitted; cf. *People v. Lopez* (1998) 66 Cal.App.4th 615, 636 [no evidence that omission of standard gang probation condition was part of the plea bargain].) This omission does not imply that there was an agreement on no fine or on a minimum fine. Instead, this omission is among the circumstances suggesting to us that defendant in this case implicitly agreed to leave the imposition and amount of restitution fines to the sentencing court's discretion.

We find further confirmation in the fact that defendant acknowledged before entering his pleas, "you could also be required to pay . . . into a general restitution fund up to $10,000 with a minimum of [$]200." If the minimum fine was a term of his plea bargain, presumably defendant or his attorney would have questioned this judicial advice.

The probation report also notified defendant that he was facing a restitution fine of $10,000 under the formula permitted by Penal Code section 1202.4, subdivision (b) and the suspended imposition of an equal amount under Penal Code section 1202.45. (*People*

v. Phillips (1994) 25 Cal.App.4th 62, 74-75 [probation report notified the defendant that reimbursement of attorney fees was sought].) At sentencing neither defendant nor his attorney objected to this recommendation or to the court's imposition of these fines. If these substantial restitution fines violated defendant's plea bargain, defendant or his attorney could be expected to have so objected at sentencing. (*Id.* at p. 75.) In this context we mention the lack of objection, not to establish forfeiture or waiver, but to demonstrate that nobody in the trial court seemed to think that the imposition of a $10,000 restitution fine violated the terms of the bargain.

The circumstances indicate that defendant's concern in entering a plea agreement was to limit his time in prison. *Walker* did not require defendant and the court to negotiate—whether to resolution or impasse—regarding the imposition or amount of restitution fines. It appears that defendant here implicitly agreed that additional punishment in the form of statutory fines and fees would be left to the discretion of the sentencing court. Accordingly, we conclude that defendant has not established that the sentencing court's imposition of restitution fines pursuant to the statutory formula violated his plea agreement.

Disposition

The judgment is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.