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## PERSPECTIVE

## Courts shouldn't punish those who can't afford to pay fines

By Timothy D. Reuben

Does due process require an ability to pay before imposing criminal fines? Is it fundamentally unfair to impose assessments to fund the courts on the poor, who can never pay the fines but suffer the consequences of civil judgments, collection calls and further cascading burden?

These questions are currently before the California Supreme Court based on different answers provided by the California Courts of Appeal. Unfortunately, the 6th District Court of Appeal, with little analysis, has just issued an opinion in support of such fines. In *People v. Petri*, 2020 DJDAR 1052, Justice Patricia Bamattre-Manoukian joined only by Justice Nathan Mihara refused to follow the 2nd District Court of Appeal's ruling in *People v. Duenas*, 30 Cal. App. 5th 1157 (2019), agreeing with the attorney general that *Duenas* was "wrongly decided" and instead affirming imposition of fines on an indigent criminal defendant who clearly could not pay them. Notably, Presiding Justice Eugene Premo dissented in part disagreeing that *Duenas* was wrongly decided.

*Duenas* involved an indigent homeless mother who pleaded no contest to driving on a suspended license. The trial court imposed \$220 in fees and fines and ordered that if not paid the amount (plus interest) would go to collections. These fines consisted of a \$30 court facilities assessment and a \$40 court operations assessment, which are not intended to be punitive but rather are parts of comprehensive legislation to raise funds for the California courts. The additional \$150 ordered was a restitution fine that was a form of punishment, and failure to pay it means

the defendant is categorically barred from earning the right to have his or her charges dropped after completing the conditions of probation. Obviously, those who cannot pay this fine — simply because they are poor — lose that right. The *Duenas* court held: "Because the only reason Duenas cannot pay the fine and fees is her poverty, using the criminal process to collect a fine she cannot pay is unconstitutional." Citing both U.S. Supreme Court and California Supreme Court authority, the 2nd District based its ruling on due process grounds. Writing for the court, Justice Laurie Zelon, joined by Justices John Segal and John Shepard Wiley, held: "Imposing unpayable fines on indigent defendants is not only unfair, it serves no rational purpose, fails to further the legislative intent, and may be counterproductive. A fine on indigent people 'is not imposed to further any penal objective of the State. It is imposed to augment the State's revenues, but obviously does not serve that purpose; the defendant cannot pay because he is indigent. ...' [citations omitted] Poor people must face collection efforts solely because of their financial status, an unfair and unnecessary burden that does not accomplish the goal of collecting money." The *Duenas* court reversed the order imposing assessments and required the trial court to first require the prosecution to prove that Duenas has the ability to pay the restitution fine before imposing it.

Despite the law and logic of *Duenas*, the divided *Petri* court disagreed, stating that *Duenas* was not "persuasive," and attempted to distinguish the multiple authorities cited therein. Briefly slicing and dicing *Duenas*' substantive authority, *Petri* argued that *Duenas* relied on "two distinct strands of precedent" and found that

neither strand would bar the imposition of assessments or restitution fines. The first "strand" is based on the right of access to the courts, while the second stems from the principle that incarceration is barred if based on the failure to pay criminal penalties due to a defendant's indigence. Narrowly construing the language of high court precedents, *Petri* simply concluded that neither of those "strands" expressly prohibits imposition of fines on the poor. *Petri* cites *People v. Hicks*, 40 Cal. App. 5th 320 (2019), which similarly disagreed with the analysis of *Duenas*, but did so with more analysis. However, *Hicks* argues *Duenas* is wrong in part because imposing fines somehow achieves rehabilitation and reintegration of a defendant by requiring him or her to "repay his [or her] debt to society." That argument simply makes no sense when a defendant is just too poor to pay the fines that are not even punitive but are intended to fund court operations and facilities. Moreover, the argument is illogical: Less financial burden would clearly enhance a poor defendant's ability to rehabilitate and reintegrate, so perhaps he or she could pay for housing or food. Fortunately, other appellate courts have concurred with *Duenas*' due process analysis. E.g., *People v. Santos*, 38 Cal. App. 5th (2019); *People v. Kopp*, 38 Cal. App. 5th 47 (2019).

It should not go unnoticed by the courts that there is a widening wealth gap in California, that housing prices are high, and that there is an escalating homelessness blight. The notion that the courts levy uncollectible fines on the already overburdened poor, many of whom commit criminal violations because they are poor, is not just unreasonable but offends justice. This is the very type of

matter that calls out for the courts to intercede to prevent such an unfair process that appears to be applied by rote. It took the wisdom of the 2nd District to recognize that the practice is contrary to due process jurisprudence. Quoting the 9th U.S. Circuit Court of Appeals, the *Duenas* court noted: "Raising money for government through law enforcement whatever the source ... can lay a debt trap for the poor. When a minor offense produces a debt, that debt ... can lead to loss of employment or shelter, compounding interest, yet more legal action, and an ever-expanding financial burden — a cycle as predictable as it is intractable." And so we must wait for the California Supreme Court, which will hopefully reject *Petri*'s and *Hicks*' rejection of *Duenas*' reasoning and hold that imposing fines on the poor, which only further burdens them and impedes their ability to escape their condition, is not just unfair and unreasonable, but it is unconstitutional under both the California and U.S. Constitutions. ■

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