

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PHIET THE DOAN
Petitioner,

v.

CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari
to the California Court of Appeal
Sixth Appellate District

PETITION FOR WRIT OF CERTIORARI

SIXTH DISTRICT APPELLATE PROGRAM
JONATHAN GROSSMAN
Counsel of Record
California State Bar #154452
95 S. Market Street., Suite 570
San Jose, CA 95113
(408) 241-6171
jonathan@sdap.org

Counsel for Petitioner

QUESTION PRESENTED

1. Did Mr. Doan have a Sixth and Fourteenth Amendment right to a jury trial on whether he owed almost \$64,000 in victim restitution?

2. Did the restitution award of almost \$64,000 constitute an excessive fine or violated due process or the equal protection clause?

LIST OF PARTIES AND RULE 29.6 STATEMENT

The parties to the proceeding below were the petitioner, Phiet The Doan, as defendant-appellant, and respondent the People of the State of California, represented by the Office of the Attorney General, by Deputy Attorney General Christen Somerville. Petitioner is not a corporation.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	-i-
LIST OF PARTIES AND RULE 29.6 STATEMENT.	-ii-
TABLE OF CONTENTS.....	-iii-
TABLE OF APPENDICES.....	-iv-
TABLE OF AUTHORITIES.....	-v-
OPINIONS BELOW.....	1
GROUND FOR JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	2
INTRODUCTION.....	3
PROCEDURAL CHRONOLOGY.....	4
STATEMENT OF EVIDENCE.....	6
REASONS FOR GRANTING CERTIORARI.	7
I. Mr. Doan had a Sixth Amendment Right to a Jury Determination of the Amount of Restitution..	7
II. The Restitution Award Constituted an Excessive Fine and Violated Due Process and Equal Protection.	11
A. The Restitution Amounted to an Excessive Fine. . . .	11
B. The Restitution Violated Due Process and Equal Protection.	14
CONCLUSION.....	15

TABLE OF APPENDICES

Opinion, California Court of Appeal, Sixth Appellate District, <i>People v. Doan</i> , 2023 WL 1392404, 2023 Cal.App. Lexis 1678 (Cal.App. Mar. 22, 2023, No. H048975)	App. A
Decision, California Supreme Court denying review, <i>People v. Doan</i> , 2023 Cal.App. Lexis 3151 (Cal. May 31, 2023, No. S279639)	App. B
Statutes	App. C

TABLE OF AUTHORITIES

CASES

<i>Allen v. Illinois</i> , 478 U.S. 364 (1986).	8
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	3,8,10,11
<i>Austin v. United States</i> , 500 U.S. 602 (1993).	11
<i>Bearden v. Georgia</i> , 461 U.S. 660 (1983).	14
<i>Griffin v. Illinois</i> , 351 U.S.12, 18-20 (1956).	14
<i>Hester v. United States</i> (2019) __ U.S. __, 139 S.Ct. 509 (2019).	3
<i>Kelly v. Robinson</i> , 479 U.S. 36 (1986).	9
<i>People v. Carbajal</i> , 10 Cal.4th 1114 (1995).	8
<i>People v. Cookson</i> , 54 Cal.3d 1091 (1992).	10,14
<i>People v. Dalvito</i> , 56 Cal.App.4th 557 (1997).	9
<i>People v. Dehle</i> , 166 Cal.App.4th 1380 (2008).	8
<i>People v. Dueñas</i> 30 Cal.App.5th 1157 (2019).	15
<i>People v. Giordano</i> , 42 Cal.4th 644 (2007).	10,14
<i>People v. Moser</i> , 50 Cal.App.4th 130 (1996).	9
<i>People v. Richards</i> , 17 Cal.3d 614 (1976).	8
<i>People v. Son</i> , 49 Cal.App.5th 565, 577-578 (2020).	15
<i>People v. Vasquez</i> , 190 Cal.App.4th 1126 (2010).	8
<i>Southern Union Co. v. United States</i> , 537 U.S. 343 (2012).	3

TABLE OF AUTHORITIES (CONTINUED)

<i>Timbs v. Indiana</i> , __ U.S. __, 139 S.Ct. 682, 689 (2019).....	11
<i>United States v. Bajakajian</i> , 524 U.S. 321 (1998).....	12
<i>United States v. Halper</i> , 490 U.S. 435 (1989).	11
<i>Vigilant Ins. Co. v. Chiu</i> , 175 Cal.App.4th 438 (2009).	9

CONSTITUTIONS

California Constitution	
art. I, § 10.	10
United States Constitution	
Sixth Amendment.....	passim
Eighth Amendment.....	2,4,6,11
Fourteenth Amendment.....	2,3,4,6,11,14

STATUTES

California Civil Procedure	
§ 683.020.	9
California Penal Code	
§ 594.....	4
§ 646.9.	4
§ 672.....	7,13
§ 1202.4.	5,8,10
28 U.S.C. section 1257.	1

OPINIONS BELOW

The opinion of the California Court of Appeal, Sixth Appellate District, the highest court to review the merits after judgment, can be found at *People v. Doan*, 2023 WL 1392404, 2023 Cal.App. Lexis 1678 (Cal.App. Mar. 22, 2023, No. H048975); it appears at Appendix A to the petition.

The order of the California Supreme Court denying review can be found at *People v. Doan*, 2023 Cal.App. Lexis 3151 (Cal. May 31, 2023, No. S279639) and appears as Appendix B.

GROUND FOR JURISDICTION

The date the California Court of Appeal decided the case was March 22, 2023. A timely petition for review was denied by the California Supreme Court on May 31, 2023. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Eighth Amendment to the United States Constitution:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States

Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof of, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory provisions are provided in the appendix.

INTRODUCTION

Under the Sixth and Fourteenth Amendments, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). The maximum punishment includes the maximum fine. *Southern Union Co. v. United States*, 537 U.S. 343, 348-352 (2012).

Whether *Apprendi* applies to victim restitution has been raised in this Court before. See *Hester v. United States* __ U.S. __, 139 S.Ct. 509, 510 (2019) (dis. opn of Gorsuch, J. from the denial of pet. for cert.) (“We’ve used the term ‘statutory maximum’ to refer to the harshest sentence the law allows a court to impose based on facts a jury has found or the defendant has admitted. [Citation.] In that sense, the statutory maximum for restitution is usually *zero*, because a court can’t award any restitution without finding additional facts about the victim’s loss.” (emphasis in original)).

This case presents whether a defendant has a right to a jury trial on the amount of restitution. It also presents a question

of whether a restitution award can be excessive under the excessive fines clause of the Eighth Amendment or the due process or equal protection clause of the Fourteenth Amendment.

PROCEDURAL CHRONOLOGY

A complaint was filed on October 25, 2017, alleging stalking, Cal. Pen. C. § 646.9(a), and felony vandalism, Cal. Pen. C. § 594(a)&(b)(1). App. A at 2-3.

On October 29, 2018, Mr. Doan was found incompetent to stand trial. His competency was restored on January 19, 2020. On February 11, 2020, Mr. Doan pled no contest to stalking with the agreement he would be placed on probation and a requirement he spend 120 days in jail. App. A at 3.

For the sentencing hearing, the prosecution requested the court order Mr. Doan pay \$163,899.31 in victim restitution. It included (1) \$650 for past psychiatric appointments; (2) \$100,000 for future psychiatric appointments; (3) \$15.46 for medication; (4) \$617.11 for acupuncture; (5) \$187 for sleeping aid drops; (6) \$694.19 for the victim's car tires; (7) \$710 for repairing the victim's car; (8) \$271.82 for repairing the victim's father's car; (9) \$883.73 for security system improvements; (10) \$494.57 for

temporary relocation costs; (11) \$11,250 of lost wages; (12) \$45,874 for reduced wages; and (13) \$2250 for a life coach. App. A at 3. Mr. Doan objected to many of the requests. App. A at 3-4.

The trial court ordered Mr. Doan to pay \$63,926.48. The court only included half the cost of repairing the victim's father's vehicle since the requested amount was for two tires, and only the damage to one tire was attributable to Mr. Doan's actions. The court also did not include the request for temporary relocation costs because of a lack of a nexus between the relocation prior to the victim being aware of Mr. Doan's actions. The court also declined to include future counseling costs because of insufficient information that the costs were likely to be incurred. The court granted the remaining amounts requested. App. A at 4. He was ordered to pay a \$330 restitution fine, which was essentially the statutory minimum restitution fine, Cal. Pen. C. § 1202.4(b)(1), (*l*) (2017), and other fees were "waived" due to him lacking the ability to pay. CT at 187.¹

¹Under California appellate procedure, the verbatim transcripts are referred to as the reporter's transcript and are denoted "RT." Papers filed in court are contained in a clerk's transcript and are denoted "CT."

Mr. Doan appealed. He argued imposing victim restitution increased his punishment without providing him a right to a jury trial under the Sixth and Fourteenth Amendment. He also argued that setting the amount of restitution to an amount he could not pay violated the excessive fines clause of the Eighth Amendment, as well as the due process and equal protection clauses of the Fourteenth Amendment.

The California Court of Appeal decided victim restitution was not part of Mr. Doan's punishment. App. A at 9. Thus, it did not violate the Sixth Amendment right to a jury trial to have the judge determine the amount. *Id.* Further, because victim restitution was not punishment, the amount did not violate the excessive fines clause of the Eighth Amendment, nor did it violate the due process or equal protection clause of the Fourteenth Amendment. App. A at 11-13.

The California Supreme Court denied review on May 31, 2023. App. B.

STATEMENT OF EVIDENCE

As described by the state Court of Appeal:

In October 2017, the victim, D.H., filed a police report with the San Jose Police Department

regarding allegations of stalking. D.H. stated that she and Doan were former high school acquaintances and teammates. She stated that Doan tried to pursue a relationship with her in high school, but she declined his advances. D.H. indicated that after Doan's graduation, he was not in contact with her for approximately six to eight years.

D.H. stated that in 2017, after she returned from an extended trip abroad for one-and-a-half years, she received a call and threatening voicemail from Doan. After receiving this voicemail, D.H. discovered that Doan had left her a number of voicemails over the course of 2016, many of which included profanities, screaming, and cursing. Between September and October 2017, Doan continued to leave threatening voicemails on D.H.'s phone, including a potential death threat and a voicemail in October 2017, saying "[f]uck you and your family. You all need to die!" D.H. also reported that Doan had been observed vandalizing her car with a large rock around October 12, 2017.

Shortly after making her first report, D.H. subsequently informed police that she had captured surveillance footage of Doan coming to her home on October 25, 2017, and slashing her front and back car tires several times.

App. A at 2.

REASONS FOR GRANTING CERTIORARI

I. Mr. Doan had a Sixth Amendment Right to a Jury Determination of the Amount of Restitution.

The maximum fine allowed for the crime of stalking is \$10,000. Cal. Pen. C. § 672. However, the court imposed a restitution fine of almost \$64,000. The state court decided

Apprendi did not apply because victim restitution was civil in nature. App. A at 9.

Whether a sanction imposed by a court is punitive under the Sixth Amendment is a matter of federal law, and a state court's determination is not dispositive. See *Allen v. Illinois*, 478 U.S. 364, 368-369 (1986). Restitution awards are considered to be part of a defendant's punishment. See, e.g., *People v. Carbajal*, 10 Cal.4th 1114, 1123-1124 (1995) (the amount of restitution can be greater than one's civil liability); *People v. Richards*, 17 Cal.3d 614, 620 (1976) (disapproved on other grounds in *Carbajal*, at 1126) ("The major goal of [the restitution statute] is to rehabilitate the criminal.); *People v. Vasquez*, 190 Cal.App.4th 1126, 1132-1133 (2010) (because the state's interest in rehabilitation is different from the private civil interests, a civil pay-out did not end the victim restitution claim). "Restitution hearings held pursuant to [Cal. Pen. C.] section 1202.4 are sentencing hearings and are thus hearing which are a significant part of a criminal prosecution." *People v. Dehle*, 166 Cal.App.4th 1380, 1386 (2008).

A “restitution order is the consequence of a criminal conviction and therefore serves the state’s interest in rehabilitating and deterring criminals.” *Vigilant Ins. Co. v. Chiu*, 175 Cal.App.4th 438, 445 (2009) “A victim’s right to sue a defendant for tortious conduct amounting to a crime and the state’s right to impose a restitution order on a criminally convicted defendant are independent of one another.” *Id.*

The conclusion that a state restitution award is inherently part of a criminal punishment was the underlying principle in *Kelly v. Robinson*, 479 U.S. 36, 47 (1986), which held that although civil debts can be discharged in bankruptcy, restitution awards cannot be. California has agreed that a defendant’s bankruptcy and the discharge of civil debts does not affect the court’s ability to impose and enforce criminal restitution. *People v. Moser*, 50 Cal.App.4th 130, 133-134 (1996); see also *People v. Dalvito*, 56 Cal.App.4th 557, 560-562 (1997) (the amount of restitution is not decreased when the debt from the stolen property is discharged in bankruptcy court). An uncollected civil judgment normally extinguishes in ten years, Cal. Civ. Proc. § 683.020, but “[a]ny portion of a restitution order that remains

unsatisfied . . . shall continue to be enforceable . . . until the obligation is satisfied,” Cal. Pen. C. § 1202.4(*l*).

A person cannot be imprisoned for failing to pay a civil debt. Cal. Const., art. I, § 10. However, a probationer can be imprisoned or have probation extended for failing to pay victim restitution. See *People v. Giordano*, 42 Cal.4th 644, 663 n. 7 (2007); *People v. Cookson*, 54 Cal.3d 1091, 1096-1100 (1992).

It might be argued that the punishment for any crime in California includes a potentially unlimited amount of restitution. But this reasoning was rejected in *Apprendi* itself. New Jersey argued that any felony was subject to a hate crime enhancement. This Court said that because the fact of an offense being a hate crime needed to be proved before the punishment could be imposed, this fact needed to be determined by a jury. *Apprendi*, 530 U.S. at 492-494.

For a court to order victim restitution, it must make a finding that the victim lost a certain amount due to the defendant’s behavior. This is an additional fact that was not encompassed in a plea or jury verdict. Thus, the right to a jury trial on the amount of loss is required under the Sixth

Amendment.

II. The Restitution Award Constituted an Excessive Fine and Violated Due Process and Equal Protection.

The award of almost \$64,000 in victim restitution amounted to an excessive fine, U.S. Const., 8th & 14th Amends., and violated the due process and equal protection clauses, U.S. Const., 14th Amend.

A. The Restitution Amounted to an Excessive Fine.

The excessive fine clause of the Eighth Amendment applies to the states through the Fourteenth Amendment. *Timbs v. Indiana*, __ U.S. __, 139 S.Ct. 682, 689 (2019). This Court has made clear that the excessive fines clause of the Eighth Amendment applies even to “civil” assessments that constitutes a form of punishment, such as “civil” forfeiture statutes that are triggered upon the commission of a criminal offense or conviction. *Id.*; *Austin v. United States*, 500 U.S. 602, 619-622 (1993) (“civil” forfeiture); see also *United States v. Halper*, 490 U.S. 435, 448 (1989) (“civil penalties”).

As explained above, victim restitution is punitive in nature. Even if it is not punitive for purposes of *Apprendi*, it qualifies as a form of punishment under the Eighth Amendment because it is

imposed only upon a criminal conviction.

“The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality.” *United States v. Bajakajian*, 524 U.S. 321, 334 (1998) The case involved a person who tried to take \$357,144 out of the United States without reporting it in violation of a statute requiring one to report transporting more than \$10,000 out of the country. *Id.* at 324-325. The government declared the entire amount was forfeited. *Id.* at 325-326. This Court held that although the statutory provision concerned a civil forfeiture scheme, the excessive fines clause applied. *Id.* at 329-333. It decided that forfeiture of the entire amount for a failure to report was grossly disproportionate to the gravity of the offense. *Id.* at 337.

This Court has set out four considerations: (1) the defendant’s culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant’s ability to pay. *Id.* at 337–338.

First, as in *Bajakajian*, Mr. Doan’s acts involves willful criminal behavior.

Second, while the victim was very frightened from the event, the case involved a mentally ill defendant. Mr. Doan has not contacted the victim since being successfully treated. See 3RT at 609. The stalking consisted of telephone messages for 2 one-month periods and vandalizing two cars, amounting to less than \$1700 in damages. CT at 173-177. It is unlikely that even a defendant free from delusions would have foreseen almost \$64,000 in restitution due to this behavior.

Third, the maximum fine allowed for the crime of stalking is \$10,000. Cal. Pen. C. § 672. But the amount of the restitution award is more than six times greater. A person can violate a long list of criminal statutes, many of which are more serious, and not accumulate such a large restitution award. For example, a defendant who kidnaps another for purposes of robbery or rape could be imprisoned for life, though the amount of victim restitution could be virtually zero.

Fourth, Mr. Doan was mentally ill and indigent. The court “waived” the imposition of fines and fees due to Mr. Doan’s inability to pay. CT at 187. Thus, the restitution award violates the excessive fines clause.

B. The Restitution Violated Due Process and Equal Protection.

Imposing victim restitution on the indigent on an amount that cannot be paid violates due process and equal protection. U.S. Const., 14th Amend.

In *Griffin v. Illinois*, 351 U.S.12, 18-20 (1956), this Court held it violated the due process and equal protection clauses of the Fourteenth Amendment to impose trial transcript fees on indigent criminal defendants wishing to appeal because there would be no opportunity to bring an effective appeal without them.

In *Bearden v. Georgia*, 461 U.S. 660, 665-667 (1983), this Court held it violated due process and equal protection to imprison the indigent for failure to pay a fine, as this created a punishment inflicted only on those who were poor.

Taken together, precedent dictates that an indigent defendant cannot receive a punishment or disadvantage that defendants with means avoid.

Some defendants can be imprisoned for not paying restitution. See *Giordano*, 42 Cal.4th at 663 n. 7; *Cookson*, 54 Cal.3d at 1096-1100. Even if they are not, the imposition of victim

restitution in amount defendants are incapable of paying has the effect of punishing them simply because they were poor. As explained in a recent state case, “[a] solvent defendant who is ordered to pay the assessments suffers the loss of the assessment amounts, but an indigent defendant under the same order experiences the web of consequences of being a delinquent debtor” *People v. Son*, 49 Cal.App.5th 565, 577-578 (2020).

The obstacles experienced by the indigent saddled with fines and fees included collection practices that can destroy one’s access to credit, interference with the responsibility to make childcare support payments, damaged employment prospects, and impairment of the defendant’s ability to be productive and support herself. See *People v. Dueñas* 30 Cal.App.5th 1157, 1164-1168 (2019).² It was this ongoing punishment that violated due process.

CONCLUSION

State courts often believe they can impose restitution fines of an unlimited amount in any criminal case. This Court should

²The court in *Dueñas* addressed fines and fees a criminal defendant could not pay but not victim restitution because it was not imposed. See *Dueñas*, 30 Cal.App.5th at 1169.

address whether a defendant enjoys any constitutional protections in the process. For the foregoing reasons, Mr. Doan respectfully requests this Court to grant writ of certiorari.

DATED: July 18, 2023

Respectfully submitted,
SIXTH DISTRICT APPELLATE PROGRAM

By: /s/ Jonathan Grossman
Jonathan Grossman
Attorney for Petitioner
Phiet The Doan