



## People v. Chang

2004 | Cited 0 times | California Court of Appeal | December 7, 2004

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### OPINION

The Jas Corporation and its officers Yong and Monique Chang contend the trial court violated their plea bargains by requiring them to pay monthly restitution in an amount to which they did not agree. Finding no breach of their plea bargains, we affirm the judgment.

Appellants were charged in a four-count felony complaint with unlawfully dumping hazardous materials. About a year into the case, they each agreed to plead guilty to one of the counts in exchange for a grant of probation. In their written plea forms, they also agreed to make restitution for all emergency response and clean up costs associated with their illegal dumping. Specifically, appellants agreed to "pay a total of \$70,000 in restitution, costs, and contributions" with "the breakdown and payees to be determined" by the court at a later date.

At the plea hearing, the court suspended imposition of sentence and placed appellants on three year's probation. The prosecutor then reiterated appellants had agreed to pay \$70,000 in restitution and asked that a hearing be scheduled "for the specific delineation of the payees and amounts." After the court said that was acceptable, defense counsel stated, "That is to be paid at \$150 a month." Appellants contend the record is incorrect and that their attorney really put the amount at \$750 per month. In any event, the prosecutor responded, "The specific agreement[] regarding payments is if the defendants choose not to pay the amount in a lump sum, the People would be willing to receive that amount payable at 10 percent annual interest, and that was the agreement." When asked if that was correct, defense counsel said yes.

The prosecutor then said he would "prepare a spread sheet determining the payment at 10 percent interest. They may change their minds and decide to borrow the money at a lower interest rate and pay the money back at whatever financial institution at that lower rate." After that, there was some discussion as to whether appellants' total restitution costs could possibly exceed \$70,000. The prosecutor assured appellants they would not. He then set forth the parties' agreement as follows: "For the record, the total amount of payment by [defendants] will be \$70,000. The amount to be



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determined regarding restitution is just as to how much that particular payee receives. The total payment contribution of restitution, costs, and funds to contributions will be \$70,000 plus 10 percent annual interest if [defendants] desire to pay that via a payment schedule." Appellants expressly agreed to this arrangement.

At the next hearing, appellants admitted they had agreed to pay \$70,000 in restitution. At the same time, they argued a material term of their plea bargain was that their restitution payments would be limited to \$750 per month. Noting that it would take appellants over seven years to make full restitution under such a payment schedule, the court rejected this argument. The court found "it's very clear in the record that it was the intention that as a condition of probation that the entire amount of \$70,000 would have to be paid during the three-year period of time." The court therefore instructed the prosecutor to develop an amortization schedule for that time period.

After crunching the numbers, the prosecutor calculated appellants' monthly restitution payment to be \$2,577.65. Appellants objected to this figure on the ground "it was not part of the plea agreement." However, the court overruled their objection and ordered them, as a group, to make monthly restitution in that amount.<sup>1</sup>

Appellants claim the court breached the terms of their plea agreements by ordering them to pony up more in monthly restitution than they actually agreed to pay. The claim does not hold water.

First of all, we are in full agreement with the trial court that the precise amount of monthly restitution was not a material component of appellants' plea agreements. When defense counsel tried to peg the figure at \$750, the prosecutor responded, "The specific agreement[] regarding payments is if the defendants chose not to pay the amount in a lump sum, the People would be willing to receive that amount payable at 10 percent annual interest . . . ." The "lump sum," of course, was the \$70,000 appellants had agreed to pay. Thus, the prosecutor was apparently trying to explain it was that amount, plus interest - not \$750 per month, plus interest - that the People would be willing to accept.

Any confusion as to this issue was put to rest later in the hearing when the prosecutor said, "The total payment combination of restitution, costs, and funds to contributions will be \$70,000 plus 10 percent annual interest if [defendants] desire to pay that via a payment schedule." Viewed in context with the prosecutor's earlier remarks, this was his way of saying appellants could either borrow the \$70,000 from a private lender and pay off their restitution obligation in a lump sum, or else pay that amount, with interest, on a schedule to be worked out by the district attorney's office. By agreeing to this arrangement, appellants manifested their understanding that the exact amount of their monthly restitution payment would be set at a later date. That is our understanding of the agreement as well.

There is another reason why we reject appellants' argument. As the trial court rightly noted, it would be absurd to set appellant's monthly restitution payment at \$750 because at that rate it would take them over seven years to make full repayment. Generally, "a probation order may be revoked or



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modified only during the period of probation. [Citations.]" (In re Bakke (1986) 42 Cal.3d 84, 89.) It simply would not make sense for the prosecutor or the court to agree to a payment schedule that would extend beyond the three-year probationary term because that would leave them with no enforcement mechanism were appellants to come up short during that period. (Compare People v. Kleinman (Nov. 12, 2004, B170598) \_\_ Cal.App.4th \_\_ [defendant may be ordered to pay outstanding amount of restitution to the victim if he violates probation during the probationary term].)

Finally, it is worth noting that from appellants' perspective, the only way to satisfy the restitution condition would be for them to pay the full amount due during the period of their probation. (See People v. Covington (2000) 82 Cal.App.4th 1263 [defendant not entitled to expungement of criminal conviction unless during the period of his probation he has made all required restitution payments and paid his obligation in full].) Thus, in terms of completing their probation, it would actually be advantageous for appellants to make full restitution by the end of their probationary term, as their current payment schedule contemplates. For all these reasons, we uphold the trial court's order requiring appellants to pay monthly restitution in the amount of \$2,577.65.

The judgment is affirmed.

WE CONCUR:

O'LEARY, J.

ARONSON, J.

1. The trial court was not oblivious to appellants' ability to meet this obligation. The court said that, if warranted, it would consider extending the term of appellants' probation to five years, so as to reduce the amount of their monthly payments.

