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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNESTO HERNANDEZ,

Defendant and Appellant.

B254534

(Los Angeles County
Super. Ct. No. PA074458)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden A. Zacky, Judge. Affirmed as modified.

Stephanie L. Gunther, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Stephen D. Matthews, and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Ernesto Hernandez appeals from a judgment in which the trial court imposed restitution fines of \$300 each under Penal Code sections 1202.4, subdivision (b) and 1202.45,¹ rather than the statutory minimum fines of \$240. The People concede error. We therefore modify the judgment and affirm.

BACKGROUND

On February 14, 2014, after a bench trial, the court found Hernandez guilty of criminal threats in violation of section 422 and battery in violation of section 242. The offenses occurred on or about July 21, 2012. In addition to imposing a prison sentence, the court imposed a \$300 restitution fine, pursuant to section 1202.4, subdivision (b), and imposed and suspended a parole revocation restitution fine in the same amount, pursuant to section 1202.45. These fines are reflected in the court's February 14, 2014 minute order and the abstract of judgment. At the sentencing hearing, the court indicated its intent to impose the statutory minimum restitution fines, stating, "He is ordered to pay— instead of having to pay an \$1,800 state restitution fine, Mr. Hernandez, I am going to impose the minimum amount. I hope you appreciate this. \$300. [¶] An identical parole revocation fine is imposed but stayed, pending his successful completion of parole."

DISCUSSION

Hernandez contends that the trial court's imposition of \$300 fines as "minimum" fines constituted a violation of the ex post facto clauses of the California and U.S. Constitutions. He seeks to have each of his fines reduced to \$240, the statutory minimum at the time of his crimes. The People concede that the minimum restitution fine under the applicable statutes was \$240, that the trial court intended to impose the minimum, and that the court therefore erred in imposing fines of \$300. The People also concede that Hernandez is entitled to a limited remand to correct the order. Alternatively, the People invite us to correct the order.

¹ All further statutory references are to the Penal Code.

“It is well established that the imposition of restitution fines constitutes punishment, and therefore is subject to the proscriptions of the ex post facto clause and other constitutional provisions. [Citations.]” (*People v. Souza* (2012) 54 Cal.4th 90, 143.) At the time of Hernandez’s offenses, section 1202.4, subdivision (b)(1) provided: “The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred forty dollars (\$240) starting on January 1, 2012, two hundred eighty dollars (\$280) starting on January 1, 2013, and three hundred dollars (\$300) starting on January 1, 2014, and not more than ten thousand dollars (\$10,000)” Section 1202.45, subdivision (a) provided: “In every case where a person is convicted of a crime and his or her sentence includes a period of parole, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4.”

Hernandez correctly observes that at the time of his offenses in 2012 the minimum statutory fine under both sections 1202.4, subdivision (b), and 1202.45 was \$240. However, during sentencing in 2014, the court imposed fines of \$300—the statutory minimum in effect at that time. In light of the court’s uncontested intent to impose the minimum allowable fine, and its error in imposing a higher fine, we conclude that the judgment should be amended to reflect the court’s intent to impose fines of \$240 under sections 1202.4, subdivision (b) and 1202.45.

DISPOSITION

For the foregoing reasons, the court’s February 14, 2014 minute order is modified to reflect a restitution fine of \$240 pursuant to section 1202.4, subdivision (b), and a parole revocation restitution fine of \$240 pursuant to section 1202.45. The parole revocation restitution fine is stayed pending Hernandez’s successful completion of parole. As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment to reflect the modification of the minute order as described above. The clerk of the superior court also is directed to

forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.