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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GROVER WILSON SMITH III,

Defendant and Appellant.

B266717

(Los Angeles County
Super. Ct. No. MA058128)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Julia J. Spikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr. and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Grover Wilson Smith III appeals the imposition of increased restitution fines under Penal Code section 1202.4, subdivision (b),¹ following revocation of a probationary term that was imposed after his no contest pleas to charges of felony child abuse and making criminal threats (§§ 273a, 422). As corrected by the trial court, the judgment is affirmed.

PROCEDURAL BACKGROUND

On January 10, 2013, Smith pled no contest in case number MA058128 to felony child abuse (§ 273a), and no contest in case number MA057205 to making criminal threats (§ 422). Smith was placed on probation for four years and ordered to serve one year in county jail. The court imposed various fines and fees, including restitution fines of \$240 under section 1202.4, subdivision (b), for each offense.² On July 21, 2015, Smith admitted that he had violated the terms of his probation on February 21, 2015. The trial court revoked probation and sentenced Smith to a six-year prison term. At the same time, the court imposed restitution fines under section 1202.4, subdivision (b), in the amount of \$1,440.

CONTENTION

Smith contends that, upon revocation of his probation, the trial court had no authority to impose restitution fines different in amount than the fines originally imposed.

¹ All further statutory references are to the Penal Code.

² The issue in this case relates only to restitution fines to be paid to the Restitution Fund, not direct victim restitution.

DISCUSSION

As the Attorney General properly concedes, the trial court had no authority to increase the amount of Smith's restitution fines after revoking his probation.

"In the absence of extraordinary and compelling circumstances, when a person is convicted of a felony, a restitution fine must be imposed, irrespective of whether probation is granted. (§ 1202.4, subd. (b).) If probation is granted, payment of the restitution fine must be made a condition of receiving probation. (§ 1202.4, subd. (m).) A restitution fine is imposed as a condition of receiving probation and the imposition of the fine survives the probationary term. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 822.) 'Furthermore, there is no provision for imposing a restitution fine after revocation of probation.' (*Ibid.*) Despite the fact that additional sentencing may be imposed upon the revocation of probation, '[t]he triggering event for imposition of the restitution fine is still conviction.' (*Ibid.*)" (*People v. Preston* (2015) 239 Cal.App.4th 415, 423; accord *People v. Downey* (2000) 82 Cal.App.4th 899, 921.)

Based on the foregoing, it is clear that the trial court lacked authority to award additional restitution fines when it revoked Smith's probation. However, we need not reverse the judgment because, after the filing of the appeal in this case, the trial court, by nunc pro tunc order, corrected the error asserted on appeal, reinstated the original \$240 restitution fines, and amended the abstract of judgment.³

³ After the close of briefing, Smith made a motion to augment the record with a minute order of a February 7, 2017

DISPOSITION

The motion to augment the record, filed May 5, 2017, is granted. The judgment, as corrected by the trial court's February 7, 2017 order, is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), J.*

hearing in the trial court, and a signed order of the same date, granting a motion for correction of fines.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.