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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN MILLAN,

Defendant and Appellant.

2d Crim. No. B297017
(Super. Ct. No. 17F-03795)
(San Luis Obispo County)

Brian Millan appeals from the judgment entered following a violation of probation. In May 2017, appellant pleaded guilty to evading a police officer by driving a vehicle with willful and wanton disregard for the safety of others (Veh. Code, § 2800.2). The trial court suspended imposition of sentence, placed him on three years of probation, and ordered him to serve 180 days in the county jail. Appellant was also ordered to pay a \$300 restitution fine under Penal Code¹ section 1202.4, subdivision (b),

¹ All further statutory references are to the Penal Code.

and a \$300 probation revocation fine (§ 1202.44), the latter of which was stayed pending his successful completion of probation.

In March 2019, the court revoked probation and sentenced appellant to two years in state prison. The court also ordered appellant to pay a \$600 restitution fine under section 1202.4 and a \$600 parole revocation fine under section 1202.45, the latter of which was stayed pending successful completion of parole.

Appellant contends the court erred in imposing a \$600 restitution fine following the revocation of his probation.² The People correctly concede the point. The \$300 restitution fine that was imposed when appellant was granted probation survived the revocation of probation. (*People v. Urke* (2011) 197 Cal.App.4th 766, 779.) “Because of this, an additional restitution fine imposed at the time probation is revoked is unauthorized and must be stricken from the judgment. [Citations.]” (*Ibid.*)

The People correctly note that the court also erred in failing to lift the stay on the \$300 probation revocation fine, and in imposing a \$600 parole revocation fine. Because probation was revoked and appellant was sentenced to prison, the stay on the probation revocation fine should have been lifted. (*People v. Guiffre* (2008) 167 Cal.App.4th 430, 434-435.) The \$600 parole revocation fine is unauthorized because the fine must be in the same amount as the restitution fine, i.e., \$300. (§ 1202.45, subd. (a).) We shall order the judgment so modified.

² Because appellant does not raise any issue related to the facts or evidence of his underlying offense or probation violation, we omit the traditional statement of facts. (*People v. White* (1997) 55 Cal.App.4th 914, 916, fn. 2.)

DISPOSITION

The judgment is modified to strike the \$600 restitution fine, lift the stay on the previously imposed \$300 probation revocation fine, and reduce the parole revocation fine from \$600 to \$300. The superior court clerk shall prepare an amended abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Hugh F. Mullin, III, Judge
Superior Court County of San Luis Obispo

Richard B. Lennon, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters,
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Respondent.