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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.

RICHARD EDWARD RAY,

Defendant and Appellant.

B293220

Los Angeles County

Super. Ct. No. MA064433

APPEAL from a judgment of the Superior Court of Los Angeles County, Christopher G. Estes, Judge. Dismissed and remanded with directions.

Daniel G. Koryn, 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, Marc A. Kohm and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

## INTRODUCTION

Defendant Richard Edward Ray was convicted of 17 sex crimes committed against three children over the course of 18 years. In his subsequent appeal, we reversed several counts and allegations on jurisdictional and ex post facto clause grounds, vacated his sentence, and remanded for resentencing. (*People v. Ray* (Apr. 30, 2018, B270084) [nonpub. opn.].) On remand, the trial court sentenced defendant to an aggregate determinate term of 19 years 4 months and a consecutive indeterminate term of 165 years to life. On appeal from that resentencing, defendant argues the court erred by failing to consider his ability to pay required fines and court fees. Because the issue is not properly before us, we dismiss the appeal and remand with directions to correct the abstract of judgment.

## DISCUSSION

### **1. Defense counsel failed to comply with Penal Code section 1237.2.**

At sentencing, the court imposed, among other required fines and court fees, a \$6,000 restitution fine (Pen. Code,<sup>1</sup> § 1202.4, subd. (b)), a \$40 operations assessment (§ 1465.8), and a \$30 conviction assessment (Gov. Code, § 70373). Defendant asks us to strike these fines and fees under *People v. Dueñas* (2019) 30 Cal.App.5th 1157. Because counsel has not complied with section 1237.2, that claim is not cognizable in this appeal.

Section 1237.2 provides: “An appeal may not be taken by the defendant from a judgment of conviction on the ground of an

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court, which may be made informally in writing.” (See also *People v. Alexander* (2016) 6 Cal.App.5th 798.)

To be sure, that prerequisite does not apply when the appeal also presents other issues. (§ 1237.2; *People v. Mendez* (1999) 19 Cal.4th 1084, 1101.) But this is not such a case. Accordingly, defendant’s challenge to the court’s imposition of fines and fees must be dismissed without prejudice to any right he has to seek relief in the trial court.

**2. The court is directed to correct the abstract of judgment on remand.**

While defendant contends he lacks the ability to pay the fines and fees imposed below, his briefs incorrectly identify the amount of the fines and fees the court actually imposed. It seems that rather than relying on the reporter’s transcript or even the sentencing minute order, defense counsel relied on the abstract of judgment—and the abstract of judgment was wrong.<sup>2</sup>

In a criminal case, the oral pronouncement of a sentence constitutes the judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) “An abstract of judgment is not the judgment of conviction; it does not control if different from the trial court’s oral judgment and may not add to or modify the judgment it purports to digest

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<sup>2</sup> The People properly brought this issue to our attention in their respondent’s brief.

or summarize.” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 (*Mitchell*); *Mesa*, at p. 471 [to the extent a minute order diverges from the sentencing proceedings it purports to memorialize, it is presumed to be the product of clerical error].) Accordingly, courts may correct clerical errors at any time, and appellate courts may order correction of an abstract of judgment that does not accurately reflect the oral pronouncement of sentence. (*Mitchell*, at pp. 185–188.)

In this case, the reporter’s transcript and minute order of the October 9, 2018 resentencing hearing both indicate that the court imposed only one \$30 conviction assessment (Gov. Code, § 70373), one \$40 operations assessment (§ 1465.8), a \$300 sex offender fine (§ 290.3), and a \$6,000 restitution fine (§ 1202.4, subd. (b)), and imposed and stayed a \$6,000 parole revocation restitution fine (§ 1202.45). Nevertheless, the abstract of judgment reflects \$680 in conviction assessments and \$510 in operations assessments—one set of fees for each count, including counts that had been dismissed. Because the abstract of judgment lists \$1,120 in fees the court did not impose, it must be corrected to remove them. (See *Mitchell*, *supra*, 26 Cal.4th at pp. 185–188 [discussing the importance of correcting inaccurate abstracts of judgment on appeal]; see also *People v. Stewart* (2004) 117 Cal.App.4th 907, 911 [on silent record, failure to impose fine implies finding that defendant lacks the ability to pay].) We order the court to do so upon remand.

## **DISPOSITION**

The appeal is dismissed and the matter is remanded with directions to correct the abstract of judgment as follows:

- in section 9d, change the court operations assessment (§ 1465.8) to \$40;
- in section 9e, change the conviction assessment (Gov. Code, § 70373) to \$30

and to send a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.