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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.

ROBERT ZAMORA,

Defendant and Appellant.

2d Crim. No. B279906  
(Super. Ct. No. 2009045826)  
(Ventura County)

Robert Zamora appeals a post-judgment order concerning a suspended \$10,000 parole revocation restitution fine. (Pen. Code, § 1202.45.)<sup>1</sup> We modify the judgment to strike the fine.

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

### *FACTUAL AND PROCEDURAL HISTORY*

In 2011, a jury convicted Zamora of first degree murder, with findings that he personally used a deadly and dangerous weapon, personally inflicted great bodily injury upon the victim, and committed the murder during a robbery. (§§ 187, subd. (a), 189, 12022, subd. (b)(1), 12202.7, subd. (a), 190.2, subd. (a)(17)(A).) The trial court sentenced Zamora to an indeterminate term of life without the possibility of parole, and to a four-year determinate term for the personal weapon use and great bodily injury allegations. The court ordered Zamora to pay a \$10,000 restitution fine, a \$10,000 parole revocation restitution fine (suspended), a \$30 court security assessment, a \$400 criminal conviction assessment, as well as \$2,931 restitution to the victim's family for funeral expenses. (§§ 1202.4, subd. (b) & (f), 1202.45, 1465.8; Gov. Code, § 70373.) The court awarded Zamora 437 days of presentence custody credit.

Zamora appealed. In an unpublished opinion, we rejected his argument of insufficient evidence, but decided that the great bodily injury enhancement was improperly imposed, and the personal weapon use enhancement should have been one year, not three years. (§§ 12022.7, subd. (g) [three-year consecutive term of imprisonment for personal infliction of great bodily injury does not apply to murder], 12022, subd. (b)(1) [one-year consecutive term of imprisonment for use of deadly weapon (knife)]; *People v. Zamora* (Sept. 11, 2012, B231703).) We modified the judgment accordingly, but otherwise affirmed.

On December 8, 2016, Zamora, in propria persona, filed a motion to vacate the restitution fine, victim restitution, and the suspended parole revocation restitution fine. Zamora also sought an order directing the California Department of Corrections and

Rehabilitation to reimburse his trust fund account with the amounts already deducted to satisfy the restitution orders.

The trial court reviewed Zamora's motion and its attachments and denied the motion. In ruling, the court concluded that sections 1170 and 3000, subdivision (a)(1) required a period of parole to the one-year determinate term for personal weapon use, and, therefore, a section 1202.45 parole revocation restitution fine was mandatory. The court also cited *People v. Brasure* (2008) 42 Cal.4th 1037, 1075: "Defendant is in no way prejudiced by assessment of the fine, which will become payable only if he actually does begin serving a period of parole and his parole is revoked."

Zamora appeals and contends that imposition of the parole revocation restitution fine is an unauthorized sentence.<sup>2</sup> The Attorney General concedes.

### *DISCUSSION*

Generally, a trial court lacks jurisdiction to resentence a criminal defendant after execution of sentence has begun. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204.) An exception to this rule is an "unauthorized sentence." (*Id.* at p. 1205.) "An unauthorized sentence because of an error in restitution must be vacated and the proper sentence imposed whenever the matter is brought to the attention of the trial or reviewing court." (*Ibid.*)

A parole revocation fine may not be imposed for a term of life imprisonment without the possibility of parole, as section 1202.45 is expressly inapplicable where there is no period of

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<sup>2</sup> Zamora has abandoned his claims regarding the section 1202.4, subdivision (b) restitution fine, and the \$2,931 in restitution to the victim's family.

parole. (*People v. Oganessian* (1999) 70 Cal.App.4th 1178, 1183 [“When there is no parole eligibility, the fine is clearly not applicable”].) The statute is clear that a restitution fine is imposed only in a “case” where a sentence has been imposed that includes a “period of parole”: “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 fine in the same amount . . . .” (§ 1202.45, subd. (a).) The deadly weapon enhancement found true here is not a case or a separate crime for which a period of parole may be imposed. (*People v. Jenkins* (2006) 140 Cal.App.4th 805, 819; *People v. Mustafaa* (1994) 22 Cal.App.4th 1305, 1311.)

The judgment is modified to strike the suspended parole revocation restitution fine. (§ 1202.45.) The trial court is directed to amend the abstract of judgment and forward the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

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

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