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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.

HUMBERTO RAMIREZ DURAN,

Defendant and Appellant.

2d Crim. No. B276767  
(Super. Ct. No. 2015002839)  
(Ventura County)

Humberto Ramirez Duran appeals from the judgment ordering him to pay probation supervision fee (Pen. Code, § 1203.1b)<sup>1</sup> after a jury convicted him of possession for sale of a controlled substance. (Health & Saf. Code, § 11378.) Appellant contends that the trial court erred in ordering him to pay a \$157 per month probation supervision fee after it found that appellant lacked the ability to pay a \$1,749 presentence investigation fee. We affirm.

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

A jury convicted appellant of possession of methamphetamine for sale after officers executed a search warrant and found 4.2 grams of methamphetamine, prescription medication, marijuana, a digital scale, five cell phones, and \$410 in cash in appellant's home. On June 13, 2016, the trial court suspended imposition of sentence, granted probation with 180 days county jail, and ordered, among other things, that appellant pay a \$157 per month probation supervision fee. Appellant stated that he understood and accepted the terms and conditions of probation, and signed a minute order setting forth the probation terms and conditions. Appellant acknowledged that "I have received a copy of these [probation] conditions. I understand and agree to each of the conditions listed above."

Appellant argues that the probation supervision fee violates section 1203.1b because the trial court found that he does not have the ability to pay the cost of the \$1,749 presentence investigation. Appellant forfeited the error by not objecting. (*People v. Trujillo* (2015) 60 Cal.4th 850, 858-860; *People v. Aguilar* (2015) 60 Cal.4th 862, 867-868; *People v. Snow* (2013) 219 Cal.App.4th 1148, 1151; *People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1072.)

On the merits, there was no sentencing error. The trial court stated that it was striking probation term 18 (i.e., that appellant pay a \$1,749 presentence investigation fee) because appellant "does not have the ability to pay the cost of the presentence investigation. Term 18 will be stricken, and all the other terms will be imposed including, but not limited to, 180 days in the Ventura County Jail." Appellant accepted the other probation terms including term 17 which provided that: "The Court find that the defendant has the ability to pay for the cost of

probation, the Court find that the cost of probation to be \$157 per month, and the Court order[] the defendant to pay for such costs.”

Appellant’s inability to pay the \$1,749 presentence investigation fee does not mean that he lacked the ability to pay a probation supervision fee. (See § 1203.1b, subd. (e) [“ability to pay” includes present financial position, future financial position, likelihood defendant will be able to obtain employment within a year].) The trial court recognized the difference and so did appellant when he agreed to pay the probation supervision fee. Appellant said that “he needs to go back to work” and was working in Oregon. “To allow a defendant and his counsel to stand silently by as the court imposes a [\$157 a month] fee, as here, and then contest this for the first time on appeal that drains the public fisc of many thousands of dollars in court and appointed counsel costs, would be hideously counterproductive.” “[Appellant’s] failure to object to the fee below has waived the claim on appeal.” (*People v. Valtakis, supra*, 105 Cal.App.4th at p. 1076.)

Appellant argues that a probation supervision fee may not be imposed as a condition of probation because section 1203.1b provides for enforcement of the order by civil collection. (See § 1203.1b, subd. (d); *People v. Hart* (1998) 65 Cal.App.4th 902, 907.) This is a nonissue. The minute order, which was dated and signed by appellant, provides that “[t]he fee ordered is a civil judgment and can be enforced by execution of wages and property.”

The judgment (order to pay probation supervision fee) is affirmed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

David Hirsch, Judge

Superior Court County of Ventura

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Paul R. Kraus, under appointment by the Court of  
Appeal for Defendant and Appellant.

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