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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 PICKERING,

Defendant and Appellant.

2d Crim. No. B235918
(Super. Ct. Nos. TA104159, TA119002)
(Los Angeles County)

Robert Pickering appeals the judgment entered after he pled no contest to four counts of commercial burglary (Pen. Code,¹ § 459). The trial court sentenced appellant to five years in state prison and ordered him to pay a \$200 restitution fine (§ 1202.4, subd. (b)), a \$160 court security assessment (§ 1465.8, subd. (a)(1)), a \$120 criminal conviction assessment (Gov. Code, § 70373), and a \$20 DNA penalty assessment (Gov. Code, § 76104.7). The court also imposed and stayed a \$200 parole revocation restitution fine (§ 1202.45) and awarded appellant 10 days presentence custody credit.²

¹ All further undesignated statutory references are to the Penal Code.

² In case number TA104159, the court revoked appellant's probation following his no contest plea to grand theft person (§ 487, subd. (c)). The court imposed a 16-month state prison term and ordered it to run concurrent to the five-year sentence imposed in case number TA119002.

Appellant's sole contention on appeal is that the court erred in imposing a \$20 DNA penalty assessment pursuant to Government Code section 76104.7. The People correctly concede the point.

Government Code sections 76104.6 and 76104.7, which were enacted for the purpose of implementing the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Proposition 69), state in pertinent part that an additional penalty shall be levied "upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses." (Gov. Code, §§ 76104.6, subd. (a), 76104.7, subd. (a).) Here, the court did not impose any fine, penalty, or forfeiture for which the additional penalty is authorized. The statutes expressly provide that the penalty does not apply to restitution fines imposed under sections 1202.4 and 1202.45. (Gov. Code, §§ 76104.6, subd. (a)(3)(A), 76104.7, subd. (c)(1).) Criminal conviction assessments imposed under Government Code section 70373 are also excluded (Gov. Code, § 70373, subd. (b)), as are court security assessments imposed under section 1465.8 (*People v. Valencia* (2008) 166 Cal.App.4th 1392, 1396). Because these are the only fines and assessments imposed against appellant, the \$20 DNA penalty assessment is unauthorized and must be stricken.

DISPOSITION

The \$20 DNA penalty assessment imposed under Government Code section 76104.7, is stricken. The superior court clerk shall prepare an amended abstract of judgment reflecting this modification and forward a certified copy to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Joel Wallenstein, Judge
Superior Court County of Los Angeles

Lenore De Vita, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B. Wilson, Supervising Deputy Attorney General, Yun K. Lee, Deputy Attorney General, for Plaintiff and Respondent.