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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.

SANTOS GARCIA,

Defendant and Appellant.

B264075

Los Angeles County
Super. Ct. No. PA080815

APPEAL from a judgment of the Superior Court of Los Angeles County,
Cynthia L. Ulfig, Judge. Affirmed as modified.

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

No appearance for Plaintiff and Respondent.

INTRODUCTION

Defendant Santos Garcia was placed on probation after pleading no contest to one count of evading an officer. While on probation, defendant was arrested in another case. As part of a plea deal in the new case, defendant admitted violating probation in this case. The court revoked probation and imposed the agreed-upon sentence. On appeal, defendant argues the court erred by denying his request to withdraw the plea in the new case. We modify the judgment to correct the fines and fees, and affirm as modified.

PROCEDURAL BACKGROUND

By felony complaint filed June 4, 2014, defendant was charged with one count of driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a); count 1) and one count of evading an officer with willful disregard for safety (Veh. Code, § 2800.2, subd. (a)). Defendant waived arraignment on the complaint and pled not guilty.

On July 15, 2014, in a negotiated disposition, defendant pled no contest to count 2. The court suspended imposition of sentence and ordered defendant to pay a \$40 court security fee (Pen. Code,¹ § 1465.8, subd. (a)(1)), a \$30 conviction assessment (Gov. Code, § 70373), a \$300 restitution fine (§ 1202.4, subd. (b)), and a \$300 probation revocation restitution fine (§ 1202.44). The court placed defendant on three years of formal probation. Among other conditions of probation, defendant was ordered to serve 365 days in county jail and to obey all laws. The court dismissed count 1 in accordance with the plea agreement.

On September 19, 2014, while on probation in the present case, defendant was arrested in case PA082439 (the new case). On March 5, 2015, defendant pled no contest in the new case to one count of robbery (§ 211) and admitted personally using a firearm in the commission of the offense (§ 12022.5, subd. (a)). In this case, defendant admitted violating probation, waived a probation revocation hearing, and was found in violation of his probation.

¹ All undesignated statutory references are to the Penal Code.

Both cases were called for sentencing on April 6, 2015. At that point, defendant moved to withdraw his plea in the new case. The court determined the plea was valid, denied the motion, and imposed the agreed-upon sentence. The court sentenced defendant to a total term of seven years and eight months in state prison. In the new case, the court selected count 1 (§ 211) as the base term, and sentenced defendant to the middle term of three years, plus four years for the firearm enhancement (§ 12022.5, subd. (a)), to run consecutive. In this case, the court terminated probation and sentenced defendant to a consecutive term of eight months. Because defendant's custody credits in this case exceeded his sentence, the court issued release number BG038977. The court also ordered defendant to pay a \$40 court security fee (§ 1465.8, subd. (a)(1)), a \$30 conviction assessment (Gov. Code, § 70373), a \$300 restitution fine (§ 1202.4, subd. (b)), and a \$300 parole revocation restitution fine (§ 1202.45), which it stayed under section 3060.1.

Defendant filed a timely notice of appeal and the court issued a certificate of probable cause. We appointed counsel to represent defendant on appeal.

On December 14, 2015, defendant's appellate counsel filed a brief in which he raised no issues and asked us to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) Later that day, we notified defendant that his counsel had failed to find any arguable issues and that he had 30 days to submit by brief or letter any arguments he wished this court to consider. We have not received a response.

DISCUSSION

We have examined the entire record, and are satisfied appellate counsel has fully complied with his responsibilities and no arguable issues exist in the appeal before us.² (*Smith v. Robbins* (2000) 528 U.S. 259, 278–284; *People v. Wende, supra*, 25 Cal.3d at

² To the extent defendant seeks to withdraw the plea in the new case, this court lacks jurisdiction to grant the requested relief because defendant did not file a notice of appeal in that case. (*In re Chavez* (2003) 30 Cal.4th 643, 652–657 [no jurisdiction to hear untimely appeal following a guilty plea].)

p. 443.) However, in our review of the record, we noted errors in the imposition of various fines and fees.

“In passing sentence, the court has a duty to determine and impose the punishment prescribed by law.” (*People v. Cattaneo* (1990) 217 Cal.App.3d 1577, 1589.) An unauthorized sentence may be challenged “for the first time on appeal, and is subject to judicial correction whenever the error comes to the attention of the reviewing court.” (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.)

First, when defendant was placed on probation in this case, the court properly imposed a \$300 restitution fine (§ 1202.4, subd. (b)) and a \$300 probation revocation restitution fine (§ 1202.44). When probation was terminated, however, the court imposed a second \$300 restitution fine (§ 1202.4, subd. (b)) along with a \$300 parole revocation restitution fine (§ 1202.45). This was error. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 821.) The second section 1202.4 fine is unauthorized because “the first restitution fine remained in force despite the revocation of probation.” (*Id.* at p. 823.) The parole revocation restitution fine (§ 1202.45) is also unauthorized. Since defendant’s custody credits exceeded his sentence in this case, the sentence does not include a possible period of parole; section 1202.45 is inapplicable. (See *People v. Oganessian* (1999) 70 Cal.App.4th 1178, 1181–1186.) We thus modify the judgment to remove both fines.

Second, when defendant was placed on probation in this case, the court properly imposed a \$40 court security fee (§ 1465.8, subd. (a)(1)) and a \$30 conviction assessment (Gov. Code, § 70373). However, when probation was terminated, the court imposed a second set of these fees. For the reasons discussed above, these additional fees are unauthorized. We therefore modify the judgment to remove them.

Third, the court must impose a \$4 air ambulance fee for every Vehicle Code conviction. (Gov. Code, § 76000.10, subd. (c)(1).) Although defendant was convicted of violating the Vehicle Code, the court did not order defendant to pay the \$4 fee. Because this fee is mandatory, we modify the judgment to impose it.

We also note that because defendant’s probation was terminated, the original section 1202.44 fine is now due. We thus direct the court to amend item 9 of the abstract

of judgment to indicate that, probation having been revoked, the previously-imposed \$300 section 1202.44 fine is now due. (*People v. Guiffre* (2008) 167 Cal.App.4th 430, 434–435.)

DISPOSITION

We modify the judgment to strike the \$300 parole revocation restitution fine (Pen. Code, § 1202.45), the second \$300 restitution fine (Pen. Code, § 1202.4, subd. (b)), the second \$40 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), and the second \$30 conviction assessment (Gov. Code, § 70373), and to add a \$4 air ambulance fee (Gov. Code, § 76000.10, subd. (c)(1)). As modified, the judgment is affirmed.

Upon issuance of remittitur, the court is directed to (1) amend the minute order of April 6, 2015 to reflect the judgment as modified, (2) amend the abstract of judgment to reflect the judgment as modified, (3) amend item 9 of the abstract of judgment to indicate that, probation having been revoked, the previously-imposed \$300 section 1202.44 fine is now due, and (4) send a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.