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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**CECILIO GONZALEZ,**

**Defendant and Appellant.**

**A131832**

**(Napa County  
Super. Ct. No. CR154759)**

Appellant Cecilio Gonzalez (defendant) pleaded no contest to five counts involving the transportation, possession, and sale of methamphetamine, and the trial court imposed a four-year prison term. On appeal, defendant asserts various claims, primarily about fees imposed by the court. We reverse and remand with directions that the court reconsider the amount of the criminal laboratory analysis fees, stay imposition of the fee on one count, and make a finding regarding defendant's ability to pay the booking fee.

**BACKGROUND**

According to the probation report, defendant sold or agreed to sell an undercover agent quantities of methamphetamine ranging from 28 grams to one pound.

By amended information, the Napa County District Attorney charged defendant with one count of conspiracy (Pen. Code, § 182, subd. (a)(1); count 1), one count of

possession of methamphetamine for sale (Health & Saf. Code, § 11378; count 3),<sup>1</sup> and three counts of sales or transportation of methamphetamine (§ 11379, subd. (a); counts 2, 6, and 7).<sup>2</sup>

In March 2011, pursuant to a negotiated disposition, defendant pleaded no contest to the five counts alleged against him in the amended information. The trial court imposed a state prison term of four years.

#### DISCUSSION

In her report, the probation officer cited section 11372.5 and recommended that the trial court impose a “\$200 Criminal Laboratory Analysis fee” on counts 2, 3, 6, and 7. At sentencing, the trial court found that section 11372.5 mandated the fines and, without objection, imposed the \$200 fee on each of those four counts. On appeal, defendant contends that the criminal laboratory analysis fees were in an unauthorized amount and that the fee imposed on count 3 should have been stayed.

Section 11372.5, subdivision (a) provides, “Every person who is convicted of a violation of Section . . . 11379 . . . shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense.” Moreover, “[t]he Legislature has superimposed onto the base fine scheme a number of penalties, assessments, fees, and surcharges,” which attach to “almost all . . . fines” imposed in criminal cases. (*People v. Sorenson* (2005) 125 Cal.App.4th 612, 617.) In *People v. Sharret* (2011) 191 Cal.App.4th 859, 863-864 (*Sharret*), the court summarized the additional fees applicable to the section 11372.5 fee: “a \$50 state penalty under Penal Code section 1464, subdivision (a)(1); a \$35 county penalty pursuant to Government Code section 76000, subdivision (a)(1); a \$10 Penal Code section 1465.7, subdivision (a) state surcharge; a \$15 Government Code section 70372, subdivision (a)(1) state court construction penalty; a \$10 Government Code section 76000.5, subdivision (a)(1) emergency medical services

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<sup>1</sup> All undesignated section references are to the Health and Safety Code.

<sup>2</sup> The amended information included seven counts against four defendants; defendant was named in five of the counts.

penalty; a \$5 Government Code section 76104.6, subdivision (a)(1) deoxyribonucleic acid penalty; and a \$5 Government Code section 76104.7, subdivision (a) state-only deoxyribonucleic acid penalty.” The total of the section 11372.5 base fee plus those listed penalties and surcharges is \$180 per count.

We are aware of no authority permitting the trial court to impose a section 11372.5 fee in the amount of \$200. Neither do the People direct this court to any authority permitting the trial court to impose criminal laboratory analysis fees of \$200 per count. Because the trial court imposed criminal laboratory analysis fees in an unauthorized amount, we reverse the judgment in that regard. On remand, the trial court should specify the penalties and surcharges that it adds to the base section 11372.5 fee. (*Sharret, supra*, 191 Cal.App.4th at p. 864; see also *People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

Defendant also contends the criminal laboratory analysis fee on count 3 should have been stayed because count 3 was stayed under Penal Code section 654. The People agree that, under *Sharret, supra*, 191 Cal.App.4th at page 870, the fine should have been stayed. We will direct the trial court to stay the criminal laboratory analysis fee it imposes on count 3 on remand.

Defendant also argues the trial court improperly imposed a booking fee of \$157 without providing a hearing or making a finding that he had the ability to pay. At oral argument, the People suggested that this court direct the trial court to make a finding on that issue on remand. We will do so.

Finally, defendant asks this court to declare invalid a “promise to pay form” appearing in the record in this case. He expresses concern that the California Service Bureau may seek to collect \$300 from him based on that document. Because defendant points to nothing in the record indicating that the trial court imposed any fee based on that form, we decline to opine on the enforceability of the agreement reflected therein.

#### DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court with instructions to reconsider the amount of the criminal laboratory analysis fees and to make

a finding regarding defendant's ability to pay the booking fee. The court is further directed to stay the criminal laboratory analysis fee it imposes on count 3. Finally, the court is directed to prepare an amended abstract of judgment reflecting the fees imposed on remand and the basis for the fees, and to forward the amended abstract to the California Department of Corrections and Rehabilitation. The judgment is affirmed in all other respects.

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SIMONS, J.

We concur.

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JONES, P.J.

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BRUINIERS, J.