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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.

FABIAN GALVAN GONZALEZ,

Defendant and Appellant.

A131834

**(Napa County
Super. Ct. No. CR154760)**

Appellant Fabian Galvan Gonzalez (defendant) pleaded no contest to three counts of sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)),¹ and the trial court imposed a six-year prison term. On appeal, defendant contends the court imposed criminal laboratory analysis fees in an unauthorized amount. We reverse and remand with directions that the court reconsider the amount of the fees.

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)), one count of possession of

¹ All undesignated section references are to the Health and Safety Code.

methamphetamine for sale (§ 11378), and four counts of sale or transportation of methamphetamine (§ 11379, subd. (a)).²

In March 2011, pursuant to a negotiated disposition, defendant pleaded no contest to three counts of sale of methamphetamine (§ 11379, subd. (a)). The trial court imposed a state prison term of six 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 each of the three counts of sale of methamphetamine. At sentencing, the trial court found that section 11372.5 mandated the fines and, without objection, imposed the \$200 fee on each of the three counts. On appeal, defendant contends that the criminal laboratory analysis fees “should not have exceeded \$190 per count” and that the trial court should have specified the statutory bases for each component part of the total fee.

At the outset, we reject the People’s contention that defendant forfeited this claim by failing to object to the fees in the trial court. Defendant contends the fees, which were a component of his sentence, were in an unauthorized amount, and an unauthorized sentence may be corrected at any time regardless of whether there was an objection in the trial court. (*People v. Smith* (2001) 24 Cal.4th 849, 854; see also *People v. Crittle* (2007) 154 Cal.App.4th 368, 371 [appellant forfeited his claim based on the trial court’s failure to determine his ability to pay fees, but not his claim that one of the fees was unauthorized].)

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

² The amended information included seven counts against four defendants; defendant was named in six of the counts.

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 (*Sharret*), the court, under section 11372.5, summarized the additional fees as follows:

- (1) “a \$50 state penalty under Penal Code section 1464, subdivision (a)(1)”;
- (2) “a \$35 county penalty pursuant to Government Code section 76000, subdivision (a)(1)”;
- (3) “a \$10 Penal Code section 1465.7, subdivision (a) state surcharge”;
- (4) “a \$15 Government Code section 70372, subdivision (a)(1) state court construction penalty”;
- (5) “a \$10 Government Code section 76000.5, subdivision (a)(1) emergency medical services penalty”;
- (6) “a \$5 Government Code section 76104.6, subdivision (a)(1) deoxyribonucleic acid penalty”; and
- (7) “a \$5 Government Code section 76104.7, subdivision (a) state-only deoxyribonucleic acid penalty.” (*Sharret*, at pp. 863-864.)

In *Sharret*, the section 11372.5 base fee plus the listed penalties and surcharges totaled \$180 per count.

Here, defendant calculates a maximum total fee of \$190 based on additional fees as follows:

- (1) \$50 under Penal Code section 1464, subdivision (a)(1);
- (2) \$35 under Government Code section 76000, subdivision (a)(1);
- (3) \$10 under Penal Code section 1465.7, subdivision (a);
- (4) \$25 under Government Code section 70372, subdivision (a)(1);
- (5) \$5 under Government Code section 76104.6, subdivision (a)(1); and
- (6) \$15 under Government Code section 76104.7, subdivision (a).

Defendant does not include any amount under Government Code section 76000.5, subdivision (a)(1); and he contends the Government Code section 70372, subdivision

(a)(1) penalty may be subject to reduction under Government Code section 70375 (see *People v. Taylor* (2004) 118 Cal.App.4th 454, 459-460).

We need not resolve the difference between the total fee amounts calculated by defendant and by the court in *Sharret*. And the People fail to direct this court to any authority permitting the trial court to impose a criminal laboratory analysis fee of \$200 per count.

Not only is there an absence of clear authority for imposition of criminal laboratory analysis fees of \$200 per count, but the trial court failed in its obligation to ensure that the penalties and surcharges added to the base section 11372.5 fee were specified in, at least, the abstract of judgment. (*Sharret, supra*, 191 Cal.App.4th at p. 864; see also *People v. High* (2004) 119 Cal.App.4th 1192, 1200.)

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. The court is further directed to prepare an amended abstract of judgment reflecting the amounts of 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.

SIMONS, J.

We concur.

JONES, P.J.

BRUNIERS, J.