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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

FALLON RYAN BROWN,

Defendant and Appellant.

A132521

(Humboldt County
Super. Ct. No. CR094454AS)

Fallon Brown was convicted of resisting an officer in violation of Penal Code section 69¹ and placed on probation. This appeal challenges only the imposition of a \$1,170 court fine. We conclude that Brown forfeited his appellate challenge to the fine by failing to object to it in the trial court, and therefore affirm.

BACKGROUND

The facts underlying Brown’s conviction are irrelevant to the sole issue on appeal. Brown’s probation report recommended that he be granted probation subject to 24 conditions. The 22nd condition included that he “pay a Court fine of \$650, pursuant to Section 672 of the California Penal Code.”

The trial court sentenced Brown as follows: “So having read and considered the April 15th report of thirteen pages, it will be the judgment and sentence of the Court imposition of judgment suspended, placing you on three years supervised probation, terms and conditions as outlined on pages one through five.” The court asked Brown

¹ Unless otherwise noted, further statutory citations are to the Penal Code.

about his current income, to which Brown responded that he was “[k]inda in between working right now, trying to start my own business.” The court continued: “Impose attorney assessment fee of three hundred fifty dollars and otherwise terms and conditions of probation as set forth in the report. Set the court fine and item 22 1170.”

The clerk’s minutes for the sentencing hearing say that Brown was placed on probation for three years “as outlined in the probation officer’s report on pages 1 through 5.” Under “modifications,” the clerk noted “# 22 \$1170.” Neither the probation report, the minute order nor the hearing transcript sheds further light on the basis for the \$1,170 fine.

Brown filed a timely appeal.

DISCUSSION

Brown asserts the \$1,170 fine must be stricken because the court imposed it under section 672, which authorizes a fine of up to \$10,000 for felony convictions when no other statute prescribes a fine.² He argues that section 672 does not apply here because section 69, under which he was convicted, specifically prescribes a fine of up to \$10,000. To this extent, Brown is correct. His fine is authorized by section 69, and, therefore, not by section 672.

However, Brown’s conclusion that the fine must therefore be stricken is incorrect. Although the record is not entirely clear, assuming that the court imposed the fine under section 672, Brown forfeited the error for appeal when he failed to raise it at the sentencing hearing. “Although the court is required to impose sentence in a lawful manner, counsel is charged with understanding, advocating, and clarifying permissible sentencing choices at the hearing. Routine defects in the court’s statement of reasons are easily prevented and corrected if called to the court’s attention. As in other waiver cases, we hope to reduce the number of errors committed in the first instance and preserve the

² “Upon a conviction for any crime punishable by imprisonment in any jail or prison, *in relation to which no fine is herein prescribed*, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in case of felonies, in addition to the imprisonment prescribed.” (§ 672, emphasis added.)

judicial resources otherwise used to correct them.” (*People v. Scott* (1994) 9 Cal.4th 331, 353.) Here, had Brown raised the inapplicability of section 672 below, the court could have corrected the apparent error in the statutory basis for the fine. He did not, so he may not challenge it on appeal.

Brown argues the fine was “unauthorized,” and, therefore, that the error was not waivable and may be raised for the first time on appeal. Not so. “Although the cases are varied, a sentence is generally ‘unauthorized’ *where it could not lawfully be imposed under any circumstance in the particular case*. Appellate courts are willing to intervene in the first instance because such error is ‘clear and correctable’ independent of any factual issues presented by the record at sentencing. [Citation.] . . . [¶] In essence, claims deemed waived on appeal involve sentences which, though otherwise permitted by law, were imposed in a procedurally or factually flawed manner.” (*People v. Scott, supra*, 9 Cal.4th at p. 354, emphasis added.) Here, the court could lawfully have imposed the fine under either section 69 or section 1203.1, which authorizes a fine “not to exceed the maximum provided by law” when the court suspends imposition of sentence. (§ 1203.1, subd. (a)(1).) Accordingly, the error was waivable, and waived.

People v. Breazell (2002) 104 Cal.App.4th 298, on which Brown relies, is inapposite. Ms. Breazell was convicted of possessing cocaine base for sale. The court imposed two separate fines under section 672 and Health and Safety Code section 11372, which authorizes fines of up to \$20,000 for persons convicted of Breazell’s offense. The appellate court concluded that the fine imposed under section 672 was unauthorized. Citing *People v. Scott, supra*, it explained: “An unauthorized sentence is a narrow exception to the requirement that the parties raise their claims in the trial court to preserve the issue for appeal. [Citation.] Generally, a sentence is unauthorized where it could not have been imposed under any circumstance in the particular case. [Citation.] Common situations where unauthorized sentences occur include violation of mandatory provisions governing the length of confinement. [Citation.] Appellate courts are willing to intervene in such situations because the error is correctable without factual disputes.” (*Id.* at p. 304.) That was the situation in *Breazell* because the fine imposed under section

672 “could not have been imposed under any circumstance in the particular case” and the error was “clear and correctable without factual dispute.” (*Id.* at pp. 304, 305.)

Here, in contrast, the trial court imposed only one fine. Although it seems to have improperly identified section 672 as the statutory basis, it could also have imposed the fine pursuant to section 69 or, alternatively, section 1203.1. Because the court’s apparent reliance on the wrong statute thus did not result in the imposition of a fine that “could not have been imposed under any circumstances in the particular case” (*Breazell, supra*, at p. 304), Brown’s failure to object below waived his challenge to it on appeal.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

McGuinness, P.J.

Pollak, J.