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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.

MICHAEL EDWARD JANSEN,

Defendant and Appellant.

A132681, 133220

**(Sonoma County
Super. Ct. No. SCR565926)**

Michael Edward Jansen appeals from an order revoking his probation and executing his state prison sentence. He contends the court erred by imposing a second restitution fine under Penal Code section 1202.4, subdivision (b), and by imposing and staying a parole revocation fine (Pen. Code, § 1202.45) higher than the original restitution fine. We will order the trial court to amend its sentencing order and abstract of judgment as set forth in this opinion.

I. FACTS AND PROCEDURAL HISTORY

In October 2009, Jansen entered a plea of no contest to charges that he inflicted corporal injury upon a spouse or cohabitant (Pen. Code, § 273.5, subd. (a)), made criminal threats (§ 422), and threatened a peace officer (§ 69).¹ He also admitted serving two prior prison terms for the purpose of sentence enhancements under section 667.5, subdivision (b).

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

In November 2009, the trial court sentenced Jansen to an aggregate term of six years eight months in state prison, suspended execution of sentence, and placed Jansen on formal probation for four years. The court further ordered Jansen to pay fines and fees including a \$220 restitution fine under section 1202.4, subdivision (b) (which included a 10 percent “administration fee”) and a \$220 restitution fine pursuant to section 1202.44 (suspended unless probation was revoked).²

Later in November 2009, the court summarily revoked Jansen’s probation and, in January 2010, found that Jansen had violated his probation based on his entry of plea in another proceeding (case number SCR573802). The court reinstated Jansen’s probation with an additional condition of imprisonment for one year in county jail, pending release to the probation department for placement in a residential treatment program. All other terms and conditions remained in effect.

In February 2011, the court again found that Jansen had violated his probation based on charges alleged in yet another proceeding (case number SCR592899). In April 2011, the court reinstated Jansen’s probation with an additional condition requiring him to complete the Delancey Street rehabilitation program. All other terms and conditions remained in effect.

In May 2011, the court found that Jansen had violated his probation by leaving the Delancey Street facility without his probation officer’s permission. In June 2011, the court determined that Jansen had also violated his probation by making criminal threats, threatening a police officer, interfering with a California Highway Patrol officer, and interfering with Sonoma County Jail staff.

In July 2011, the court executed Jansen’s previously-suspended sentence of six years eight months in state prison. The court imposed a restitution fine of \$880 under section 1202.4. The court also imposed a \$880 restitution fine under section 1202.45, suspended unless parole is revoked.

This appeal followed.

² The court also prematurely imposed a \$220 parole revocation restitution fine pursuant to section 1202.45, suspended unless parole was revoked.

II. DISCUSSION

As mentioned, Jansen contends the court erred in imposing the second restitution fine of \$880 (§ 1202.4, subd. (b)), because the original restitution fine survived the termination of his probation. He further argues that the court erred in imposing and staying a parole revocation fine of \$880 (§ 1202.45), because it is in an amount higher than the original restitution fine. Respondent essentially concurs, but adds that the previously imposed probation revocation fine is now due.

There are three distinct fines at play here. As of the date relevant here, section 1202.4, subdivision (b)(1) provided for a *restitution* fine of between \$200 and \$10,000 for a person convicted of a felony. (§ 1202.4, subd. (b)(1), as amended by Stats. 2011, ch. 45, § 1, effective July 1, 2011.) When a person is placed on probation, section 1202.44 provides for a *probation revocation* restitution fine in the same amount as the restitution fine imposed under section 1202.4, subdivision (b). The probation revocation fine is suspended pending successful completion of probation. When a person is committed to state prison and his sentence includes a period of parole, section 1202.45 provides for a *parole revocation* restitution fine in the same amount as the restitution fine imposed under section 1202.4, subdivision (b). The parole revocation fine is suspended unless the person's parole is revoked.

As to the restitution fine (§ 1202.4), the amount cannot exceed what was imposed when probation was previously granted, because the earlier fine survived the revocation of probation and remained in effect. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 823; *People v. Guiffre* (2008) 167 Cal.App.4th 430, 434 (*Guiffre*)). The restitution fine in this case must therefore be reduced to \$220.

As to the parole revocation fine (§ 1202.45), the amount must be the same as the restitution fine. The parole revocation fine in this case must be reduced to \$220.

Lastly, as to the previously-imposed probation revocation fine (§ 1202.44), the fine should no longer be suspended, since probation was revoked. The probation revocation fine of \$220 is now due. (*Guiffre, supra*, 167 Cal.App.4th at p. 435.)

Accordingly, we will order that the trial court's order of July 11, 2011, and the abstract of judgment be amended to reflect a restitution fine of \$220 (§ 1202.4, subd. (b)) and a suspended parole revocation fine of \$220 (§ 1202.45). We will further order that the order and abstract reflect that the probation revocation fine of \$220 (§ 1202.44) is now due.

III. DISPOSITION

The trial court shall revise its order of July 11, 2011, and amend the abstract of judgment to reflect a restitution fine of \$220 (§ 1202.4, subd. (b)(1)) and a suspended parole revocation fine of \$220 (§ 1202.45), and to indicate that a probation revocation fine of \$220 under section 1202.44 is now due, probation having been revoked. The trial court shall forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

NEEDHAM, J.

We concur.

JONES, P. J.

BRUINIERS, J.