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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A133454

v.

**(Alameda County
Super. Ct. No. CH50115)**

JAMES CASTEX OWEN,

Defendant and Appellant.

_____ /

James Castex Owen appeals from a judgment entered after he pleaded no contest to inflicting corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)),¹ and assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)). He contends the trial court erred when it imposed three different fines. We agree the court erred when it imposed two of the fines and will order the appropriate modification.

I. FACTUAL AND PROCEDURAL BACKGROUND

We need not recite the facts of appellant's crime in detail given the nature of the issues that have been raised. It should suffice to say that on August 27, 2010, appellant brutally assaulted the victim, his girlfriend. The victim went to a neighbor's house and the police were called. The victim suffered bruising and a concussion that was so serious

¹ All further statutory references are to the Penal Code.

she could not remember what happened. After the incident, appellant sent text messages to the victim blaming her for the attack.

Based on these facts, in February 2011, an information was filed charging appellant with the offenses we have set forth above. As to both counts, the information also alleged appellant had inflicted great bodily injury within the meaning of section 12022.7, subdivision (e).

The case was resolved through negotiation. Appellant pleaded no contest to both counts and admitted the great bodily injury allegations. In exchange, the prosecutor agreed appellant would be sentenced to no more than three years in prison.

On July 13, 2011, the court sentenced appellant to two years in prison.

II. DISCUSSION

A. Validity of the Fines Imposed under Sections 1202.4 and 1202.45

The trial court did not tell appellant when accepting his plea that it was obligated to impose a restitution fine under section 1202.4² and a corresponding parole revocation fine under section 1202.45.³ Notwithstanding these omissions, the court imposed both fines at sentencing ordering appellant to pay \$800 for each.

Appellant now contends the trial court erred when it imposed both fines because they were not part of his plea agreement.

The People concede the error and we agree.

² As is relevant here, section 1202.4, subdivision (a)(2) states: “Upon a person being convicted of any crime . . . the court shall order the defendant to pay a fine in the form of a penalty assessment”

When these proceedings were conducted, section 1202.4 subdivision (b)(1) stated: “The restitution fine shall be set at the discretion of the court . . . but shall not be less than two hundred dollars . . . and not more than ten thousand dollars”

³ As is relevant here, section 1202.45 states: “In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4.”

When a defendant pleads guilty in exchange for a plea, both parties, including the state must abide by the terms of the agreement. (*People v. Walker* (1991) 54 Cal.3d 1013, 1024.) When the breach at issue is the failure to tell a defendant that he will be subject to a mandatory fine, the proper remedy is to reduce the fine to the statutory minimum and to leave the plea bargain intact. (*People v. Crandell* (2007) 40 Cal.4th 1301, 1308.)

Here, the trial court did not tell appellant when accepting his plea that he would be obligated to pay a restitution fine under section 1202.4 or a parole revocation fine under section 1202.45. We will reduce each fine to the statutory minimum.

B. Validity of the Probation Investigation Fee

The abstract of judgment states the trial court imposed a \$250 probation investigation fee under section 1203.1b. Appellant now contends that fine must be stricken because the court did not *orally* impose the fee at the sentencing hearing.

We reject this argument because it is based on a false premise. At the sentencing hearing on July 13, 2011 the court stated as follows: “I’ll also make the following civil orders: *a probation investigation fee of \$250 . . .*” (Italics added.)

The abstract of judgment accurately reflects the court’s oral pronouncement. No modification is necessary.

III. DISPOSITION

The trial court is ordered to prepare and to forward to the Department of Corrections and Rehabilitation an amended abstract of judgment that shows appellant must pay a \$200 restitution fine under section 1202.4 and is subject to a \$200 parole revocation fine under section 1202.45.

In all other respects, the judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.