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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.  
CATHI L. LARSON,  
Defendant and Appellant.

A134554  
(Lake County  
Super. Ct. No. CR926545;  
CR925515; CR926547B)

Defendant and appellant Cathi L. Larson pleaded guilty to a drug-related offense in each of three separate criminal proceedings and the trial court imposed sentence in the three cases at a combined sentencing hearing. On appeal, defendant contends: (1) the trial court's imposition of fees pursuant to Health and Safety Code, sections 11372.5 and 11372.7, together with associated penalty assessments, may be unauthorized amounts and are not properly set forth in the court's order; and (2) the evidence was insufficient to demonstrate appellant's ability to pay the drug program fees and penalties.<sup>1</sup> We shall strike \$10 from the penalty assessment on the criminal laboratory analysis fee imposed in case number CR926547B and with that modification affirm the judgment in all other respects.

<sup>1</sup> Further statutory references are to the Health and Safety Code unless otherwise noted.

## **FACTS AND PROCEDURAL BACKGROUND**

### **Case Number CR925515**

In December 2010, defendant was detained by a tribal police officer for being under the influence of methamphetamine at a casino. The officer found clear plastic bags with measurable amounts of methamphetamine in defendant's purse.<sup>2</sup> On January 26, 2011, the Lake County District Attorney (DA) filed a felony complaint, charging defendant with possession of methamphetamine in violation of section 11377, subdivision (a). Subsequently, defendant pleaded no contest to the charge and was placed on Proposition 36 probation pursuant to Penal Code, section 1210.1. Following her arrest on a new offense, the trial court revoked defendant's Proposition 36 probation. Defendant admitted the violation of probation at a hearing held on December 12, 2011.

### **Case Number CR926547B**

On May 6, 2011, defendant was a passenger in a car stopped by police because the driver had an outstanding warrant. The rear seat of the vehicle held 165 marijuana plants growing in individual pots set in trays; the trunk held a sack of potting soil and more pots; and the glove compartment contained dried marijuana buds weighing 18.2 grams. Defendant was on Proposition 36 probation at the time of this incident.

On December 8, 2011, the DA filed an information, charging defendant with cultivation of marijuana (§ 11358) and transportation of marijuana (§ 11360, subd. (a)). On December 12, 2011, defendant pleaded guilty to the cultivation charge and the court dismissed the transportation charge.

### **Case Number CR926545**

On May 10, 2011, a police officer stopped a vehicle because the driver was not wearing a seatbelt. Defendant was a passenger in the vehicle. Defendant and the driver were detained after the officer determined the front license plate of the vehicle had been stolen. Before the vehicle was towed, officers conducted an inventory search of the

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<sup>2</sup> Because this appeal pertains only to sentencing issues, we recite only a few underlying facts about the offenses so the reader can differentiate between the cases.

vehicle and found two plastic bags containing methamphetamine and other drug paraphernalia. After defendant was transported to the county jail, a corrections officer found a glass pipe in her backpack and a small bag of methamphetamine secreted on her person.

On December 8, 2011, the DA filed an information, charging defendant with bringing a controlled substance and a device to use in consuming a controlled substance into the county jail (Penal code, § 4573 (section 4573)); transportation of methamphetamine (§ 11379, subd. (a)); possession of methamphetamine (§ 11377, subd. (a)); and possession of drug paraphernalia (§ 11364). On December 12, 2011, defendant pleaded guilty to the section 4573 charge, and the remaining charges were dismissed.

### **Sentencing**

At the sentencing hearing held on January 9, 2012, the trial court denied probation, found that the aggravating factors outweighed those in mitigation and imposed the upper term sentence of four years on the section 4573 conviction in case number CR926545. In case number CR925515, the trial court permanently revoked probation and imposed the mid-term of two years running concurrently with the sentence in CR926545. In case number CR926547-B, the trial court imposed the term of eight months (one-third of the midterm of two years) running consecutively to the sentence imposed in CR926545, for an aggregate term of four years and eight months.

In regard to fines and penalties, the court stated: “The defendant is ordered to pay the following fine: A restitution fine of \$1,368. That’s a combination of fines as laid out in the probation report. Probation having been revoked in case CR-925515, the previously stayed restitution of \$200 is now imposed. The [] defendant is ordered to pay a combined court security fee totaling \$120 [\$40 per case], [and] combined criminal conviction assessment fines totaling \$90, \$30 per case. In case ending 515, the defendant is ordered to pay a drug program fine of \$150 plus penalty assessment of \$420. In that same case, she is ordered to pay a criminal laboratory analysis fine of \$50 plus penalty assessment of \$140.

“In case ending 547-B, the defendant is ordered to pay a drug fine of \$150 plus penalty assessment of \$450. She’s ordered to pay a criminal laboratory analysis fine of \$50 plus a penalty assessment of \$150. There’s so many fines and fees with drug cases.

“In case ending 515, she’s ordered to pay a \$50 AIDS education fine pursuant to Penal Code section 1463.23.”<sup>3</sup> The court ordered that defendant serve her term of confinement in county jail. Defendant filed a timely notice of appeal on January 31, 2012.

### DISCUSSION

As the trial court noted, there are a lot of fines and fees in drug cases. Of the plethora of fines imposed here, defendant asserts error based on the imposition of only two, namely, criminal laboratory (lab) fines (§11372.5) and associated penalty assessments, and drug program fees (§11372.7) and associated penalty assessments.<sup>4</sup> Specifically, defendant asserts that because the trial court failed to state the legal basis for the penalty assessments added to the criminal lab fines and the drug program fees, the matter must be remanded “for a determination of the authority for and the proper amounts

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<sup>3</sup> In its oral pronouncement of judgment, the court imposed the fines and penalty assessments on those fines in the order and manner set forth in the Probation Officer’s recommendations in the pre-sentence report, except that the court did not state the statutory basis for each fine and fee set forth in the probation report.

<sup>4</sup> Section 11372.5 provides: “Every person who is convicted of a violation of [specified offenses] shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense.” (§ 11372.5, subd. (a).)

Section 11372.7 provides: “(a) . . . [E]ach person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars (\$150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law. [¶] (b) *The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person’s financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution.*” (§ 11372.7, subs. (a)-(b) [italics added].)

of the fines and penalty assessments.” Respondent acquiesces in defendant’s request to remand the case, apparently concurring with defendant that the trial court judge erred because he “did not specify the statutory bases for each fee and penalty amount at the sentencing hearing.”

We reject the parties’ assertions that remand is warranted for clarification of the judgment; rather, we conclude the trial court adequately described the legal basis for the fines and penalty assessments. *People v. Voit* (2011) 200 Cal.App.4th 1353 (*Voit*) is instructive on this point. In *Voit*, defendant’s sentence included a Sexual Habitual Offender Fund fine under Penal Code, section 290.3, subdivision (a). “At sentencing the court orally imposed this fine ‘plus penalty assessment’ without specifying the amount of the assessment. The minute order of the hearing and the abstract of judgment identify a “PA” (presumably penalty assessment) amount as \$1,325.” (*Id.* at p. 1372) On appeal, defendant challenged “the procedure by which the penalty assessment was imposed,” arguing that “the court is required in open court to specify the amount of the assessments, surcharges, and penalties.” (*Ibid.*)

The *Voit* court rejected defendant’s challenge, concluding “the trial court adequately pronounced judgment by imposing a specific fine and generally referring to the applicable penalty assessments.” (*Voit, supra*, 200 Cal.App.4th at p. 1373.) The *Voit* court specifically relied on *People v. Sharret* (2011) 191 Cal.App.4th 859 (*Sharret*) on this point. In *Sharret*, the appellate court noted that “trial courts frequently orally impose the penalties and surcharge discussed above by a short-hand reference to ‘penalty assessments’ and stated “[t]his is an acceptable practice.” The *Sharret* court also stated that where the trial court refers generally to ‘penalty assessments,’ “[t]he responsibility then falls to the trial court clerk to specify the penalties and surcharge in appropriate amounts in the minutes and . . . the abstract of judgment.” (*Id.* at p. 864.) The *Voit* court stated that whereas *Sharrett* did not specifically address “the issue whether a general oral reference to penalty assessments is sufficient[,] . . . the court’s approval of the practice was doubtless deliberate, and it is reasonable, considering that many of these assessments, surcharges, and penalties are mandatory and are often imposed on appeal in

the first instance to correct an otherwise unauthorized sentence.” (*Voit, supra*, 200 Cal.App.4th at p. 1373.)

Here, the court ordered defendant to pay “a drug program fine of \$150 plus penalty assessment of \$420 . . . [and] a criminal laboratory analysis fine of \$50 plus penalty assessment of \$140” in case number CR 925515, and, in case number CR 926547B, to pay a drug fine of \$150 plus penalty assessment of \$450 and a criminal laboratory analysis fine of \$50 plus a penalty assessment of \$150. The clerk of court recorded the basis for the fine and the amount of the penalty assessments applicable to those fines in the criminal minutes of the sentencing hearing. The trial court’s pronouncement of judgment in regard to the challenged penalty assessments was adequate under *Voit* and *Sharrett* because the trial court identified the specific basis of each fine (criminal laboratory analysis fine and drug program fee) and determined the dollar amount of the penalty assessments associated with each fine.<sup>5</sup> (See *Voit, supra*, 200 Cal.App.4th at p. 1373 [stating “the trial court adequately pronounced judgment by imposing a specific fine and generally referring to the applicable penalty assessments”]; and *Sharret, supra*, 191 Cal.App.4th at p. 864.)

Defendant also argues the penalty assessments imposed by the trial court in association with the criminal laboratory analysis fines (§ 11372.5) were excessive. Specifically, defendant contends the penalty assessments levied on the criminal laboratory analysis fine should be reduced to \$130 from \$140 in CR925515, and to \$140

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<sup>5</sup> Respondent urges a contrary conclusion under *People v. High* (2004) 119 Cal.App.4th 1192 (*High*). In *High*, the sentencing court, instead of reading the separate fines, fees and penalties into the record, imposed a sum total of drug program fine and criminal laboratory analysis fine but failed to articulate what amounts represented statutorily allowable fees versus penalties—thus impeding collection efforts of state and local agencies. (*High, supra*, 119 Cal.App.4th at p. 1200.) In contrast to *High*, the trial court in this case described the bases for imposition of the fines, “as laid out in the probation report” (which, moreover, listed the statutory authorities for the fines) and, as importantly, specified the dollar amount of the fee and penalties imposed. Thus, *High* does not compel reversal in this case.

from \$150 in CR926547-B.<sup>6</sup> We find that the lab fee of \$140 imposed in CR925515 is correct and that the lab fee of 150 imposed in CR926547-B should be reduced to \$140.

Criminal laboratory analysis fees are subject to the following penalty assessments per statute: a state penalty under Penal Code section 1464, subdivision (a)(1); a county penalty pursuant to Government Code section 76000, subdivision (a)(1); a Penal Code section 1465.7, subdivision (a) state surcharge; a Government Code section 70372, subdivision (a)(1) state court construction penalty; a Government Code section 76000.5, subdivision (a)(1) emergency medical services penalty; a Government Code section 76104.6, subdivision (a)(1) [DNA] penalty; and a Government Code section 76104.7, subdivision (a) state-only [DNA] penalty. (See *Sharret, supra*, 191 Cal.App.4th at pp. 863-864.) As of May 2011, the relevant date here,<sup>7</sup> these statutory fines amounted to \$140. Thus, the trial court correctly imposed a penalty assessment of \$140 on the criminal laboratory fine imposed in CR925515. Conversely, in imposing a penalty assessment of \$150 in CR926547B, the court exceeded the allowable penalty assessment by \$10.<sup>8</sup> Accordingly, we shall reduce the penalty assessment imposed in CR926547B from \$150 to \$140.<sup>9</sup>

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<sup>6</sup> On the same base fine of \$50 for criminal lab fines in CR925515 and CR926547B, the trial court imposed different penalty assessments of \$140 and \$150, respectively. A penalty assessment beyond that permitted by law would constitute an unauthorized sentence, which may be appealed without objection below and which we may correct on appeal. (See *People v. Smith* (2001) 24 Cal.4th 849, 852; *People v. Crittle* (2007) 154 Cal.App.4th 368, 371.)

<sup>7</sup> We use the statutes in effect when defendant committed her crimes in May 2011. (See *Voit, supra*, 200 Cal.App.4th at p. 1374; see also *People v. Batman* (2008) 159 Cal.App.4th 587, 591-592 [DNA penalty assessments imposed were punitive and “must be stricken because defendant committed the qualifying offense prior to the effective date of Government Code section 76104.6”].)

<sup>8</sup> As respondent points out, an additional penalty under Government Code section 76000.5 *may* also apply to the criminal laboratory fines. (See Gov’t Code § 76000.5, subd.(a)(1) [providing that the county board of supervisors may elect to levy an additional penalty “in the amount of two dollars (\$2) for every ten dollars (\$10)” on every fine imposed for purposes of supporting emergency medical services].) Because the record before us contains no evidence that the Lake County Board of Supervisors

Last, we turn to defendant’s contention that the evidence was insufficient to demonstrate her ability to pay the drug program fees and associated penalty assessments. This contention, however, was not “raised and preserved” below, and accordingly, is waived for purposes of appeal. (See *People v. Smith* (2001) 24 Cal.4th 849, 852 [stating that the California Supreme Court has “created a narrow exception to the waiver rule for ‘ “unauthorized sentences” ’ or sentences ‘entered in excess of jurisdiction,’ ” presenting pure issues of law that can be corrected on appeal “without referring to factual findings in the record or remanding for further findings”].)<sup>10</sup> Nevertheless, we shall address the issue on the merits in order to foreclose any ineffective assistance of counsel claim raised by defendant.

In addressing the merits, we bear in mind that whereas the trial court must determine whether or not the defendant has the ability to pay a drug program fee (§ 11372.7), “[n]o express finding as to a defendant’s ability or inability to pay is required. [Citations.]” (*People v. Martinez* (1998) 65 Cal.App.4th 1511, 1516 (*Martinez*)). Moreover, in the absence of express findings, we must presume the judgment is correct and indulge all intendments and presumptions to support it. (See *Martinez, supra*, 65 Cal.App.4th at p. 1517 [citing cases].) Also, “[a]bility to pay does not necessarily require existing employment or cash on hand.” (*People v. Staley* (1992) 10 Cal.App.4th 782, 785.) Rather, ability to pay may be established on the basis of defendant’s future ability to earn sufficient income. (*Id.* at pp. 782-783.)

Here, the record demonstrates that at the time of sentence defendant was a 45 year old woman in good physical and mental health, who asserted she can do physical labor. She graduated from high school in 1985 and completed a 14-month certificate program in

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elected to levy this additional penalty, we decline to impose it in either case — the amount involved is de minimis, and it furthers judicial efficiency to discount it rather than remanding the matter for a further hearing.

<sup>9</sup> Defendant does not challenge the dollar amount of penalty assessments related to any of the other fees and fines imposed.

<sup>10</sup> This forfeiture issue is currently pending before the California Supreme Court in *People v. McCullough*, S192513, review granted June 29, 2011.

computerized accounting in 2001. She drinks very little alcohol and does not use marijuana or cocaine; however, she has struggled with abuse of methamphetamine. Her methamphetamine habit has negatively affected her family life and employment history. In this regard, defendant stated she is currently transient, living with friends and family for short periods of time, and her sister is the guardian of her children. Defendant stated she was drug free from 1994-2001, had a relapse then was clean again from 2005 to 2009. During the latter period, she worked as a construction flagger with construction companies in Santa Rosa and Ukiah. Indeed, in her letter to the court, defendant stated that when she was “clean and sober” she “rented my own place, had a great job and good home life with kids.” Moreover, defendant shows every intention of reestablishing a life free of drugs. While in custody, she was participating in Narcotics Anonymous, Alcoholics Anonymous, and the Jail Education and Employment Program (JEEP). A letter from the JEEP coordinator submitted to the trial court stated defendant “has shown a willingness to learn new skills in the area of employment and education.” A letter from Manna Home, a faith-based, residential drug/alcohol recovery program, indicates defendant applied for and was accepted into the program. Defendant told the probation officer that at the time of her arrest she already knew she needed to stop using drugs because “it just wasn’t working for me any more” and that “she wanted to change her life and stop using methamphetamine.” On this record, the trial court “was entitled to infer” that defendant could avail herself of services to overcome her drug abuse, enhance her skills and education, and obtain another “great job” upon her release from confinement. (Cf. *People v. Staley, supra*, 10 Cal.App.4th at p. 786 [in assessing ability to pay, trial court was “entitled to infer that defendant’s poor employment history was not due to functional causes but was the product of defendant’s choice of lifestyle” and to consider defendant’s statements that he “intended to mend his ways and become a productive member of society”].) Moreover, the total amounts imposed in drug fees and assessments, \$570 and \$600, are not unduly burdensome. In sum, we conclude the record adequately supports the trial court’s implied finding that defendant has the ability to pay the drug program fees and penalty assessments.

**DISPOSITION**

The judgment is ordered modified by reducing the penalty assessment for the criminal laboratory analysis fee in CR926547B by \$10. As so modified, the judgment is affirmed.

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Jenkins, J.

We concur:

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Pollak, Acting P. J.

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Siggins, J.