

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOPLIN JAMES COOK,

Defendant and Appellant.

A140679

(Sonoma County  
Super. Ct. No. SCR557891)

THE COURT:\*

Appellant Joplin James Cook admitted violating the terms and conditions of his probation, and the court imposed a previously suspended prison sentence. The court also imposed a \$280 restitution fine and stayed a parole revocation fine in an equal amount. Cook challenges only the fines, contending that the court could not properly increase the original amounts imposed (\$220 each). The People concede the point. Since the facts and applicable law are not in dispute, we resolve the matter by memorandum opinion (Cal. Stds. Jud. Admin., § 8.1) and order the judgment modified accordingly.

On April 9, 2010, Cook entered pleas of no contest to being a convicted felon in possession of a firearm and ammunition (Pen. Code, former §§ 12021, subd. (a)(1), 12316, subd. (b)(1))<sup>1</sup>; possession of methamphetamine and methamphetamine while armed (Health & Saf. Code, §§ 11377, subd. (a), 11370.1, subd. (a)); and possession of

\* Before Jones, P.J., Simons, J., and Bruiniers, J.

<sup>1</sup> Undesignated statutory references are to the Penal Code.

stolen property (§ 496). He admitted “strike” enhancements (§ 1170.12) as to each count. On July 28, 2010, Cook was sentenced to a prison term of four years and eight months, with execution of sentence suspended. He was placed on probation for a period of 36 months, with a section 1202.4 restitution fine of \$220 (\$200 plus a 10 percent administration fee) and suspended a fine of the same amount under section 1202.44.

On October 25, 2013, Cook admitted violating the terms of his probation, based on a subsequent criminal conviction. On December 5, 2013, the court ordered execution of the previously imposed prison term for the original case (No. 557891) in addition to a consecutive term for the new conviction (No. 635805). The court imposed restitution fines for both cases pursuant to section 1202.4 (\$280 each), and suspended fines in equal amounts for both cases pursuant to section 1204.45. Cook filed a timely notice of appeal.

Cook challenges only the \$280 fines imposed for case No. 557891. He contends that the July 28, 2010 fine amounts remained in force despite revocation of probation, and the court was therefore without statutory authority to increase those fines when it revoked probation on December 5, 2013. (See *People v. Chambers* (1998) 65 Cal.App.4th 819, 822–823.) The People agree.<sup>2</sup>

Accordingly, we modify the judgment by striking the \$280 fines for case No. 557891. The section 1202.4 restitution fine of \$220 imposed on July 28, 2010, remains in effect to the extent not previously satisfied. The section 1202.44 restitution fine of \$220 stayed on July 28, 2010, is now due, probation having been revoked. The trial court is directed to prepare an amended abstract of judgment consistent with this disposition and deliver it to the Department of Corrections and Rehabilitation.

---

<sup>2</sup> Cook’s notice of appeal raised only denial of presentence conduct credits as a ground for appeal. However, the increased fine was an unauthorized sentence in excess of the trial court’s authority and can be raised at any time. (*People v. Scott* (1994) 9 Cal.4th 331, 354.)