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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.

DANIEL R. CARKEEK,

Defendant and Appellant.

A141680

(Contra Costa County
Super. Ct. No. 01641182)

Defendant Daniel R. Carkeek pleaded no contest to felony possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)). The appeal challenges a fine, fees, and assessments imposed in connection with the disposition. We reverse the judgment insofar as it imposes a restitution fine, and affirm the balance of the judgment as modified.

BACKGROUND

At the March 18, 2014 plea hearing, the court discussed imposition of a \$600 drug education program fee, a \$200 criminal laboratory analysis fee, and “court fees” not otherwise specified. The court ultimately imposed “the indicated court fees and assessments” without further elaboration. In addition to the \$600 drug education fee and the \$200 laboratory fee mentioned at the hearing, the minutes for the hearing reflect imposition of \$200 in attorney fees, a restitution fine of \$140, a \$40 “COA” (Pen. Code, § 1465.8, subd. (a)(1) [court operations assessment]) fee, and a \$30 “CCA” (Gov. Code, § 70373, subd. (a)(1) [criminal conviction assessment]) fee.

DISCUSSION

Carkeek challenges the fine, fees, and assessments listed in the minute order that were not part of the court's oral pronouncement of judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471 [rendition of judgment is an oral pronouncement]; *People v. Zackery* (2007) 147 Cal.App.4th 380, 385 [where there is a discrepancy between the oral pronouncement of judgment and the minute order, the oral pronouncement controls].)

The COA and CCA assessments “are a required part of defendant’s sentence and may be corrected on appeal.” (*People v. Robinson* (2012) 209 Cal.App.4th 401, 405.) The attorney fees were within the terms of the plea agreement. When Carkeek pleaded no contest, he signed a court order acknowledging his potential liability for \$200 in attorney fees, subject to procedures set forth in the order to determine and contest his ability to pay that amount. He also executed a “waiver and plea form” that stated: “I understand that conviction of the charge(s) will require me to pay appropriate restitution to the victim(s) of my crimes and/or to pay a restitution fine of not less than \$200 and not more than \$10,000 [for a felony conviction]”

Except for the \$140 restitution fine, the challenged assessments and fees reflected in the minute order but not in the reporter’s transcript were either mandatory, or clearly contemplated by the plea agreement. The oral pronouncement of judgment can properly be modified to include them in order to correct unauthorized portions of the sentence and implement the parties’ agreement to the extent it can be determined from the record of the plea.

The People argue that we should increase the restitution fine from \$140 to \$280, the presumptive statutory minimum for felony offenses in 2013. (See *People v. Hanson* (2000) 23 Cal.4th 355, 357 [prohibition against double jeopardy precludes increase in restitution fine on resentencing]; *People v. Neely* (2009) 176 Cal.App.4th 787, 799–800 [distinguishing *Hanson* where the original sentence was unauthorized].) We decline to do so. A restitution fine appears to have been part of the plea bargain, but we cannot determine why or if the court determined \$140 rather than \$280 was an appropriate fine.

Carkeek also argues that he should have received credit for his time in custody against the amounts he was required to pay in the judgment. Under the terms of the plea agreement and the disposition, he was released after 36 days in custody and given credit for 36 days actual days served. He reasons that he accumulated additional credits during that time, which should have reduced his monetary liability. (Pen. Code, § 2900.5, subd. (a).) This argument fails because the record shows that he was not in custody solely on his current offense. (See Pen. Code, § 2900.5, subd. (b) [under this section, “credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted”]; *People v. Bruner* (1995) 9 Cal.4th 1178, 1180–1181].) At a hearing on February 25, 2014, the prosecutor stated that Carkeek was “not even in custody solely on this case,” and defense counsel stated that Carkeek was “in custody on another matter.”

DISPOSITION

The oral pronouncement of judgment is amended to include imposition of: \$200 in attorney fees (Pen. Code, § 987.8); a \$40 court operations assessment fee (Pen. Code, § 1465.8); and a \$30 criminal conviction assessment fee (Gov. Code, § 70373). The restitution fine is vacated and this case is remanded to the superior court for consideration of a restitution fine. As amended, all other aspects of the judgment are affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.