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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.

HERNANDO FELIX, JR.,

Defendant and Appellant.

A141987

(Contra Costa County
Super. Ct. No. 05-140574-5)

Defendant Hernando Felix, Jr. was found guilty of second degree robbery and placed on probation. On appeal, his sole argument is that the restitution fine imposed pursuant to Penal Code¹ section 1202.4 should be reduced from \$300 to \$280.

It is unnecessary to recount the facts of the underlying robbery offense except to note that it took place in 2013. Following a court trial in May 2014, defendant was found guilty of second degree robbery. (§§ 211, 212.5, subd. (c).) The court placed defendant on probation subject to a variety of conditions. The court initially stated its intention to impose a minimum restitution fine of \$280 but then increased the fine to \$300 after the clerk reminded the court that the minimum restitution fine increased from \$280 to \$300 as of January 2014.

At the time defendant committed the offense in 2013, the minimum restitution fine was \$280. (See § 1202.4, subd. (b)(1).) As of January 1, 2014, the minimum restitution fine was increased to \$300. (*Ibid.*) Defendant contends the increase in the minimum

¹All further statutory references are to the Penal Code.

restitution fine is not retroactive to the date of the offense, and he argues that the court plainly intended to impose the minimum fine allowable under section 1202.4, subdivision (b). According to defendant, the restitution fine should be reduced to \$280, the minimum fine in effect at the time he committed the offense in 2013. The Attorney General agrees that the restitution fine should be reduced as defendant proposes.

“The prohibition against ex post facto laws applies to restitution fines.” (*People v. Martinez* (2014) 226 Cal.App.4th 1169, 1189; see *People v. Souza* (2012) 54 Cal.4th 90, 143.) A restitution fine that is greater than that authorized by section 1202.4 at the time of the offense violates the constitutional prohibition against ex post facto laws. (*Souza, supra*, at p. 143.)

Here, although the court had discretion to impose a restitution fine greater than \$280, the record reflects that the court intended to impose the minimum fine authorized by statute. We agree with defendant and the Attorney General that the fine should be reduced to the statutory minimum in effect at the time of the offense in order to give effect to the court’s intention. (See *People v. Martinez, supra*, 226 Cal.App.4th at p. 1190.)

DISPOSITION

The order of probation is modified to reflect a restitution fine of \$280 pursuant to section 1202.4. In all other respects, the judgment is affirmed.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.