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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.

MATTHEW COLE McKEOWN,

Defendant and Appellant.

A144025

(Del Norte County  
Super. Ct. No. CRF149332)

Defendant Matthew Cole McKeown appeals from a judgment entered after he pleaded guilty to robbery and admitted he used a firearm in the commission of the robbery. Defendant's sole contention on appeal is that the trial court erred in imposing a \$200 fine under Penal Code section 672.<sup>1</sup> We disagree and shall affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

An information filed August 26, 2014, charged defendant with second degree robbery (§ 211, count 1) and possession of a firearm by a felon (§ 29800, subd. (a), count 2). The information alleged as to count 1 that defendant used a firearm in the commission of the robbery (§ 12022.53, subd. (b)) and further alleged he had suffered two prior prison terms (§ 667.5, subd. (b)).

The information was based on an incident that occurred on June 19, 2014.<sup>2</sup> At approximately 4:25 a.m. that day, police officers and sheriff's deputies were notified that

<sup>1</sup>All further statutory references are to the Penal Code unless otherwise stated.

<sup>2</sup>These facts are taken from the probation officer's report.

a robbery was in progress at the Lighthouse Inn in Crescent City and that the suspect, who was in possession of a long-barreled firearm, had fled in a vehicle towards a nearby park. Officers responded to the scene and apprehended the suspect who, along with two females, had exited the vehicle and fled on foot. Inside the vehicle were several items of clothing, a shotgun, a tote bag, and cash. Witnesses provided a description of the male suspect that matched defendant and the clothing found in the vehicle.

Defendant entered a guilty plea to count 1 and admitted the firearm enhancement allegation. In entering the plea, he acknowledged he could be sentenced up to 15 years in prison and ordered to pay a fine and a penalty assessment of up to \$10,000. The trial court sentenced defendant to 12 years in prison, consisting of the mitigated term of two years for second degree robbery, enhanced with a mandatory 10-year term for the firearm use. The court also ordered him to pay \$1,231 in fines, stating, “It’s my intention to impose total fines and penalty assessments of \$1,231. It will be a \$200 base fine; \$10 theft assessment and base fines; \$40 court security surcharge, a conviction assessment of \$30; 1202.4 fine, as well as the penalty assessments, for a total of \$1,231.” The court asked defense counsel whether he needed “clarification of the fines,” to which counsel responded he did not. The ledger attached to the minutes shows the court imposed the \$200 fine under section 672 and the \$10 fine under section 1202.5, subdivision (a).

#### **DISCUSSION**

Defendant contends the \$200 fine under section 672 constitutes an unauthorized sentence because section 672 applies only when no other fine is prescribed and here a fine for robbery is prescribed in section 1202.5, subdivision (a), under which the court imposed a \$10 fine.

The Attorney General argues that defendant forfeited the issue by failing to raise it below, but defendant contends the fine constitutes an unauthorized sentence that may be corrected at any time. We need not resolve the issue because, in all events, we conclude the \$200 fine was authorized.

Section 672 provides: “Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the

court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in cases of felonies, in addition to the imprisonment prescribed.” “The language used in section 672 demonstrates that it was meant to provide a fine for offenses for which another statute did not impose a fine. In other words, this is a catchall provision allowing a fine to be imposed for every crime, even if the statute criminalizing the conduct did not specifically authorize a fine. The limiting provision was meant to ensure that a fine pursuant to section 672 would not be imposed if another statute authorized a fine for the offense.” (*People v. Breazell* (2002) 104 Cal.App.4th 298, 304.)

Here, the statute that prescribes the punishment for the offense of which defendant was convicted does not include a fine. Section 213, subdivision (a)(1)(B)(2), provides in full: “Robbery of the second degree is punishable by imprisonment in the state prison for two, three, or five years.” Thus, robbery is an offense “in relation to which no fine is herein prescribed.” (§ 672.)

Moreover, a fine that is “expressly intended to be additional to any fines the court may impose for the specified offense[.]” does not constitute a “prescribed” fine for purposes of section 672. (*People v. Clark* (1992) 7 Cal.App.4th 1041, 1045–1046 (*Clark*), accord *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1518, fn. 2.) In *Clark*, the defendant was convicted of possession of a controlled substance under Health and Safety Code section 11377, subdivision (a), and the trial court ordered him to pay a “\$500 fine plus penalty assessment.” (7 Cal.App.4th at p. 1044.) The defendant contended that “because section 11377 authorizes a fine of up to \$70 for anyone convicted of possessing various controlled substances, such fine is ‘prescribed’ by that section and no further fine can be assessed under Penal Code section 672.” (*Clark*, p. 1045.) Division Five of this court disagreed, emphasizing that under Health and Safety Code section 11377, the \$70 fine was to be imposed “*in addition to any other fine imposed*” for the specified offense. (*Clark*, p. 1046.) The *Clark* court also noted that the legislative history behind Health and Safety Code section 11377 showed the Legislature intended the \$70 fine to be used exclusively to pay for an AIDS education program.

(*Clark*, p. 1046.) The court concluded: “Contrary to appellant’s interpretation, nothing in Assembly Bill No. 2374 suggests that the Legislature contemplated the \$70 fine as a substitute for other authorized fines. Rather, the legislative history reveals that the Legislature intended to create a separate funding source through the court’s discretionary imposition of the \$70 fine for the establishment of AIDS education programs. The \$70 fine is expressly intended to be additional to any fines the court may impose for the specified offenses. Consequently, the court’s imposition of the \$500 fine and penalty assessment were permissible under section 11377.” (*Clark*, p. 1046.)

Similarly, here, section 1202.5, under which the trial court imposed the \$10 fine, provides in relevant part: “(a) In any case in which a defendant is convicted of any of the offenses enumerated in Section 211 [robbery], 215, 459, 470, 484, . . . the court shall order the defendant to pay a fine of ten dollars (\$10) *in addition to any other penalty or fine imposed*. . . . [¶] (b)(1) All fines collected pursuant to this section shall be held in trust by the county collecting them, until transferred to the local law enforcement agency to be used exclusively for the jurisdiction where the offense took place. *All moneys collected shall implement, support, and continue local crime prevention programs*. [¶] (2) All amounts collected pursuant to this section shall be in addition to, and shall not supplant funds received for crime prevention purposes from other sources.” (Italics added.) In other words, the statute expressly provides that the \$10 fine is intended to be additional to any fines imposed for the specified crimes including robbery, and that it is to be used exclusively by the jurisdiction in which the crime took place to help fund crime prevention programs. Thus, the \$10 is not a fine “prescribed” (§ 672) for the offense of robbery (see *Clark, supra*, 7 Cal.App.4th at page 1046), and the trial court was authorized to impose the \$200 fine under section 672.

#### **DISPOSITION**

The judgment is affirmed.

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Pollak, Acting P. J.

We concur:

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Siggins, J.

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Jenkins, J.

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