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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE VILLALOBOS,

Defendant and Appellant.

B233429

(Los Angeles County
Super. Ct. No. BA344807)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael D. Abzug, Judge. Affirmed as modified.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Lawrence M. Daniels and Michael R. Johnsen, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant pleaded no contest to one count of infliction of corporal injury on the mother of his children (Pen. Code,¹ § 273.5, subd. (a)), with the use of a deadly weapon (§ 12022, subd. (b)(1)). Defendant was placed on formal probation for a period of five years, with various terms and conditions, including serving 365 days in county jail. A protective order was also entered, prohibiting defendant from having any contact with Daisy Castillo (Castillo), the mother of his children. The court also imposed a \$20 court security assessment (§ 1465.8, subd. (a)(1)), a \$400 domestic violence fund fee (§ 1203.097), a \$200 restitution fine (§ 1202.4, subd. (b)), and imposed and stayed a \$200 probation revocation restitution fine (§ 1202.44).

In May 2011, a contested probation violation hearing was held. The court found defendant to be in violation of the terms of his probation. On May 24, 2011, the court sentenced defendant to three years in state prison. The court's minutes and abstract of judgment reflect a \$40 court security assessment (§ 1465.8, subd. (a)(1)), a \$30 court facilities assessment (Gov. Code, § 70373), a \$400 domestic violence fund fee (§ 1203.097), a \$200 restitution fine (§ 1202.4, subd. (b)), and a \$200 probation revocation restitution fine (§ 1202.44).

On appeal, defendant contends that the trial court erred when it imposed a \$400 domestic violence fee. He also challenges the propriety of the court facilities assessment and the \$40 court security assessment. We agree that the court facilities assessment must be stricken and the court security fee reduced to \$20. In all other respects, we affirm the judgment.

¹ Unless otherwise stated, all further statutory references are to the Penal Code.

FACTS²

Gloria Vanegas (Vanegas) owned and lived in an apartment complex in Los Angeles. Around midnight on February 12, 2011, defendant, holding a kitchen knife, banged loudly on the door of her apartment. One of her tenants was Castillo, the mother of defendant's three children. Defendant screamed at Vanegas, stating that he wanted to kill her and her 15-year-old son. Her son, who was in the apartment, heard his mother scream and called 911.

Los Angeles Police Department Officers Marlana Lopez and Miguel Herrera responded to the 911 call. Officer Lopez described Vanegas as "shaken." After being taken into custody, defendant told Officer Herrera that he had told Vanegas he wanted to talk to her son. Defendant was upset because of the way Vanegas's son had been speaking to Castillo. Defendant denied threatening anyone. Castillo testified that defendant did not threaten Vanegas, and he did not have a knife.

DISCUSSION

Domestic Violence Fund Fine

The abstract of judgment refers to a \$400 domestic violence fund fine. The trial court imposed a \$400 domestic violence fund fine when defendant was placed on probation. Defendant contends that the trial court erred by imposing a duplicative \$400 fee at the time of sentencing after probation was revoked in May 2011. We disagree.

Section 1203.097 provides in pertinent part as follows: "(a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following: [¶] . . . [¶] (5) A

² Since the only issues defendant raises on appeal relate to fees and assessments imposed, we will only include a brief summary of the facts from the probation violation hearing.

minimum payment by the defendant of four hundred dollars (\$400) to be disbursed as specified in this paragraph. . . .” No provision relieves a defendant of responsibility for this fine if probation is revoked.

The abstract of judgment does not appear to reflect a “duplicative” fee. In *People v. Chambers* (1998) 65 Cal.App.4th 819, “the trial court imposed two separate restitution fines for the same conviction: a \$200 restitution fine at the time probation was granted and a \$500 restitution fine at the time probation was revoked.” (*Id.* at p. 823.) The court determined that the later fine was unauthorized because “the first restitution fine remained in force despite the revocation of probation.” (*Ibid.*) In the instant case, it appears that the abstract of judgment reflects the original domestic violence fund fee imposed at the time probation was granted and was not a duplicative fee as imposed in *Chambers*. (Cf. *People v. Cropsey* (2010) 184 Cal.App.4th 961, 965-966 [restitution and parole revocation fines “reimposed” at sentencing were not duplicative but simply represented the original fines carried over after probation revocation].)

Court Security and Court Facilities Assessments

Defendant contends that the \$30 court facilities assessment (Gov. Code, § 70373) must be stricken because the statute authorizing it was not in effect at the time he was convicted by guilty plea. He also contends that the \$40 court security assessment (§ 1465.8, subd. (a)(1)) imposed at sentencing must be reduced to \$20 because the legislation that increased the amount of that fee beyond \$20 did not become effective until after defendant was convicted. The People concur.

On September 17, 2008, defendant was placed on probation. Probation was later revoked and, in May 2011, defendant was sentenced to a term of three years in state prison and ordered to pay the two assessments.

Penal Code section 1465.8, subdivision (a)(1), requires the imposition of a court security fee “on every conviction for a criminal offense” This section became operative on August 17, 2003, and originally called for a \$20 assessment. On July 28, 2009, an amendment went into effect which increased the assessment to \$40. As noted

above, defendant was convicted on September 17, 2008. Having been convicted before the section's amendment, he is not subject to the higher \$40 fee but rather to the \$20 fee in effect at the time of his conviction. (*People v. Alford* (2007) 42 Cal.4th 749, 754.)

On January 1, 2009, Government Code section 70373 went into effect.

Subdivision (a)(1) provides in part: "To ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense . . . in the amount of thirty dollars (\$30) for each . . . felony . . ." Because defendant was convicted on September 17, 2008, prior to Government Code section 70373 becoming operative, he is not subject to the \$30 court facilities assessment. (*People v. Davis* (2010) 185 Cal.App.4th 998, 1000, 1001; *People v. Brooks* (2009) 175 Cal.App.4th Supp. 1, 5.)

DISPOSITION

The judgment is modified by reducing the \$40 court security fee to \$20, and striking the \$30 court facilities assessment. The judgment is affirmed in all other respects. The trial court is directed to prepare a corrected abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.