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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD RYAN COMPTON,

Defendant and Appellant.

2d Crim. No. B237187
(Super. Ct. No. F454513)
(San Luis Obispo County)

Richard Ryan Compton appeals the order revoking his probation and sentencing him to two years in state prison following his no contest plea to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and battery upon a peace officer (Pen. Code,¹ § 243, subd. (b)). His sole claim on appeal is that the trial court erred in increasing his previously imposed restitution fine (§ 1202.4) from \$200 to \$400. The People concede the issue, and ask us to order the judgment modified to reflect that the corresponding \$200 probation revocation fine (§ 1202.44) is now due. We shall order the abstract of judgment modified accordingly, and also order the parole revocation fine (§ 1202.45) reduced to \$200. Otherwise, we affirm.

When appellant entered his plea on January 6, 2011, the court suspended imposition of sentence, placed him on probation, and ordered him to serve 180 days in

¹ All further undesignated statutory references are to the Penal Code.

county jail. Appellant was also ordered to pay a \$200 restitution fine pursuant to section 1202.4, and a \$200 probation revocation fine (§ 1202.44) was imposed and stayed pending appellant's successful completion of his probation.

In May 2011, appellant was convicted in Modoc County of various charges and was sentenced to four years in state prison. At appellant's request, the trial court revoked probation in the instant matter and sentenced him to a concurrent two-year prison term. The court also imposed a \$400 restitution fine pursuant to section 1202.4, subdivision (b). A corresponding \$400 parole revocation fine was imposed and stayed pending appellant's successful completion of his parole as contemplated under section 1202.45.

Appellant contends the \$400 restitution fine imposed under subdivision (b) of section 1202.4 must be reduced to \$200 because the fine previously imposed in that amount survived the revocation of his probation and could not be increased. The People properly concede the point. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 820-821.) As the People also note, the record does not reflect that the court lifted the stay on the \$200 probation revocation fine. The abstract of judgment must be modified accordingly. (*People v. Guiffre* (2008) 167 Cal.App.4th 430, 434-435.) Because a parole revocation fine imposed under section 1202.45 must be in the same amount as the restitution fine, we shall also order the abstract modified to reduce that fine from \$400 to \$200. (*People v. Johnson* (2003) 114 Cal.App.4th 284, 306-308; *People v. Downey* (2000) 82 Cal.App.4th 899, 921.)

DISPOSITION

The judgment is modified to reflect that: (1) the \$400 restitution fine imposed under section 1202.4, subdivision (b), is reduced to \$200; (2) the \$400 parole revocation fine imposed and suspended under section 1202.45 is reduced to \$200; and (3) the \$200 probation revocation fine previously imposed and stayed under section 1202.44 is now due and payable. The trial court is directed to prepare an amended abstract of

judgment reflecting the modifications and to forward the amended abstract to the California Department of Corrections and Rehabilitation.

The judgment is affirmed as modified.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

California Appellate Project, Jonathan B. Steiner, Executive Director, Richard B. Lennon, Staff Attorney, 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, Steven D. Matthews, Supervising Deputy Attorney General, Analee J. Brodie, Deputy Attorney General, for Plaintiff and Respondent.