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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES MARK MILLER,

Defendant and Appellant.

B246624

(Los Angeles County  
Super. Ct. No. MA052452)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Kathleen Blanchard, Judge. Affirmed as modified.

Allison H. Ting, 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, Assistant Attorney General, Steven D. Matthews and Brendan Sullivan, Deputy Attorneys General, for Plaintiff and Respondent.

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We modify a minute order underlying criminal judgment to clarify that duplicative fines have not been imposed, and affirm the judgment with the modification.

### FACTS

On July 18, 2011, defendant and appellant Charles Miller pleaded no contest to brandishing a firearm (Pen. Code, § 417, subd. (b))<sup>1</sup> in case number MA052452 [hereinafter referred to as “this case”]. The trial court suspended imposition of sentence, and placed Miller on formal probation for four years. The court imposed a \$200 restitution fine (§ 1202.4, subd. (b)), a \$200 probation revocation fine (§ 1202.44) which was stayed pending successful completion of probation, a \$40 court security fee (§ 1465.8), and a \$30 criminal conviction assessment (Govt. Code, § 70373). The fines were set forth in a minute order.

On December 3, 2012, in a different matter, case number MA056182 [hereinafter referred to as “the subsequent case”], the trial court sentenced Miller to a total aggregate term of 26 years in state prison after he was convicted of first degree robbery (§ 211) and dissuading a witness by the use of force or threat of force (§ 136.1, subd. (c)(1)), with a prior strike conviction.

At the time of sentencing in the subsequent case, the court terminated probation in this case, and sentenced Miller to eight months in state prison, to be served consecutive to the sentence imposed in the subsequent case.

In imposing the aggregate sentence on the subsequent case, which included the consecutive sentence in this case, the court orally pronounced the following fines and fees, as to this case:

“Sir, in that probationary case, you are still required to pay the fines that were originally imposed; which is a \$200 restitution fund fine, a \$200 parole revocation fund fine which I shall now impose and stay; a \$200 parole [*sic*; probation] revocation fund fine. There’s a \$40 court security fee and a \$30 criminal conviction fee.”

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<sup>1</sup> All further section references are to the Penal Code except as otherwise noted.

The minute order of December 3, 2012 indicates the imposition of a \$40 court operations assessment, a \$30 criminal conviction assessment, and a notation that the total amount due is \$70. Further that “the defendant is to pay a restitution fine pursuant to section 1202.4 (B) Penal Code in the amount of \$200.00. Defendant is to pay a parole restitution fine, pursuant to Penal Code section 1202.45, in the amount of \$200.00 said fine is stayed and the stay is to become permanent upon successful completion of parole. Defendant is ordered to pay a probation revocation restitution fine pursuant to Penal Code section 1202.44, in the amount of \$200.00 this fine may be enforced in the manner provided for the enforcement of money judgments.”

The abstract of judgment in this case reflects the imposition of one \$200 restitution fund fine, pursuant to section 1202.4, subdivision (b), one probation revocation fine pursuant to section 1202.44, which is “now due, probation having been revoked,” one \$200 parole revocation fine pursuant to Penal Code section 1202.45, which is “suspended unless parole is revoked,” one \$40 court security fee and one \$30 criminal conviction assessment.

Miller thereafter filed a timely appeal from the judgment in this case.<sup>2</sup>

### **DISCUSSION**

Miller contends the court’s minute order of December 3, 2012, and the abstract of judgment dated December 5, 2012, are susceptible to an interpretation that duplicative \$200 restitution fines, \$40 court security fees, and \$30 criminal conviction assessments were imposed in this case. In other words, the trial court imposed a first set of such fines and fees in July 2011, when imposition of sentence was suspended and probation was imposed, and it is possible to understand the trial court’s documents of December 2012 to indicate that a second round of the same fines and fees were imposed at the time of sentencing following revocation of probation. The People agree that there could be an ambiguity. We modify the minute order, but not the abstract.

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<sup>2</sup> Miller’s appeal from the judgment in case number MA056182 is currently pending in our court. (Case No. B245685.)

In every criminal case, the court must impose a restitution fine, payable to the State Restitution Fund in a minimum amount of \$200. (§ 1202.4, subd. (b).) In addition, fines in the same amount as those imposed under 1202.4, subdivision (b) must be imposed, as follows: a probation revocation restitution fine under section 1202.44 if probation is granted, and a parole revocation restitution fine under section 1202.45 if the sentence includes a period of parole. The probation and parole fine are suspended pending successful completion of probation or parole. Court security and criminal conviction fees are likewise mandatory. (§ 1465.8; Govt. Code, § 70373.)

A sentencing court may not impose a second restitution fund fine upon revocation of probation because the fine initially imposed at the time of the grant of probation remains in place, with or without regard to the subsequent revocation of probation. (See *People v. Chambers* (1998) 65 Cal.App.4th 819, 822-823.) By similar reasoning, a second court security fee and a second criminal conviction assessment, both of which are, by statutory language, tied to a defendant's conviction, likewise may not be imposed. (See *People v. Crittle* (2007) 154 Cal.App.4th 368, 371.)

While the minute order in this case might be interpreted as reflecting that the trial court imposed two \$200 restitution fund fines, two \$40 court security fees and two \$30 criminal conviction assessments, there are no duplicative fines and fees on the abstract of judgment. The abstract of judgment correctly indicates but one fine in every category, and that the probation revocation fine is due and payable, given that probation was revoked. As a result, the court's minute order of December 3, 2012 is ordered modified to indicate the imposition of one \$200 restitution fund fine, one \$40 court security fee, and one \$30 criminal conviction assessment, as previously set forth by the trial court upon the grant of probation. As to the probation and parole revocation fines listed in the minute order, they are correct and not to be modified. The abstract of judgment is not modified.

**DISPOSITION**

The minute order underlying the judgment is modified by this opinion. In all other respects, the judgment is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.