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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

TYCE RENARD JACKSON,

Defendant and Appellant.

C067788

(Super. Ct. No.
10F06311)

In exchange for a stipulated sentence, defendant Tyce Renard Jackson pleaded no contest to spousal battery and admitted a prior "strike" conviction.

On appeal, defendant first contends the trial court erred in ordering him to pay a main jail booking fee of \$287.78 and a main jail classification fee of \$59.23 because there is insufficient evidence to support a finding he had the ability to pay jail booking and classification fees. Under Government Code section 29550.2, subdivision (a), "Any person booked into a county jail pursuant to any arrest . . . is subject to a

criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, as defined in subdivision (c) If the person has the ability to pay, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action" Subdivision (c) of the same section authorizes fees for booking and classification while in jail.

Defendant claims that since the statute is predicated on a defendant's ability to pay and there was no evidence before the trial court that he had such ability, the fees were improperly imposed. The People respond that defendant forfeited this issue by not objecting in the trial court to payment of the jail fees.

We find the People's argument persuasive. This court has previously held that if a defendant does not object in the trial court to the imposition of a fee or fine, the issue is forfeited. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371 [crime prevention fine—Pen. Code, § 1202.5, subd. (a)]; *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357 [jail booking fee—Gov. Code, § 29550.2]; *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1467, 1468-1469 (*Gibson*) [restitution fine—Gov. Code, former § 13967, subd. (a).) We have applied the

forfeiture rule even when the defendant claims on appeal that there is not sufficient evidence to support the imposition of the fine or fee. (*Gibson, supra*, 27 Cal.App.4th at pp. 1467-1469.)

The Sixth Appellate District, however, has concluded that appeals challenging the imposition of fines and fees based on claims of insufficient evidence "do not require assertion in the court below to be preserved on appeal." (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397, citing *People v. Viray* (2005) 134 Cal.App.4th 1186, 1217.) This holding created a conflict between *Pacheco* and the cases cited above. The California Supreme Court will likely soon resolve the conflict. (See *People v. McCullough* (2011) 193 Cal.App.4th 864, review granted on June 29, 2011, S192513.)

Until the California Supreme Court issues further guidance, we continue to adhere to our holding in *Gibson, supra*, 27 Cal.App.4th 1466, i.e., that a failure to object to a fee or fine in the trial court forfeits the issue, even where the statute contemplates a judicial finding of ability to pay and the defendant challenges the sufficiency of the evidence to support such a finding. (*Id.* at pp. 1467, 1468-1469.) "As a matter of fairness to the trial court, a defendant should not be permitted to assert for the first time on appeal a procedural defect in imposition of a restitution fine, i.e., the trial court's alleged failure to consider defendant's ability to pay the fine. [Citation.] Rather, a defendant must make a timely objection in the trial court in order to give that court an

opportunity to correct the error; failure to object should preclude reversal of the order on appeal." (*Id.* at p. 1468.) Not applying forfeiture principles in such cases not only encourages attorney gamesmanship, but depletes judicial resources and wastes taxpayer money. (See *id.* at pp. 1468-1469.) Accordingly, we conclude that defendant's failure to raise the issue of his ability to pay the main jail classification fee and main jail booking fee in the trial court precludes review for the first time on appeal.

Defendant also asks that we order the trial court to amend the abstract of judgment to reflect that, at sentencing, defendant was ordered to pay restitution fines of \$200 each pursuant to Penal Code sections 1202.4 and 1202.45; the abstract of judgment incorrectly indicates that defendant is obligated to pay restitution fines of \$1,200 under those sections. The People agree that the abstract should be amended as defendant suggests, and asks that it be further amended to reflect the court's pronouncement at sentencing that no victim restitution was ordered, and its imposition of a main jail booking fee of \$287.78, a main jail classification fee of \$59.23, and a court facility fee of \$30.

We agree with the parties' respective requests for amendment of the abstract of judgment to eliminate the discrepancies between the oral pronouncement of judgment and the abstract of judgment. (See *People v. Zachary* (2007) 147 Cal.App.4th 380, 385-386.)

DISPOSITION

The judgment is affirmed. The trial court shall correct the abstract of judgment to delete any reference to victim restitution and to reflect the trial court's imposition of the following fees: (1) \$200 restitution fines pursuant to Penal Code sections 1202.4, subdivision (b) and 1202.45; (2) a main jail booking fee of \$287.78 (Gov. Code, § 29550.2); (3) a main jail classification fee of \$59.23 (Gov. Code, § 29550.2); and (4) a court facility fee of \$30 (Gov. Code, § 70373). Thereafter, the court shall send a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

_____ RAYE _____, P. J.

We concur:

_____ MAURO _____, J.

_____ HOCH _____, J.