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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

ARTURO BARAJAS MARTINEZ,

Defendant and Appellant.

C067985

(Super. Ct. No. 105497,
CRF075478)

Defendant pled no contest in 2007 (case No. CRF075478) to possessing methamphetamine and received probation. In 2011, defendant pled no contest in case No. CFR105497 to possessing methamphetamine, and admitted serving prior prison terms. Defendant's probation having been revoked in case No. CRF075478, the trial court sentenced defendant to prison on both matters in the same proceeding and imposed various fines and fees.

On appeal, defendant contends he is entitled to additional custody credits, and the trial court erred in imposing some of the fines and fees. He also asks that the abstract of judgment be amended to state with particularity the amount and statutory

bases of all fines and fees, and amended to indicate that fines, fees, and assessments associated with case No. CRF075478 are imposed as previously ordered on December 6, 2007, to ensure they are not collected more than once.

The People concede that defendant is entitled to all the relief he seeks. We agree.

I.

Custody Credits

At sentencing, defendant was awarded 720 days' credit in case No. CFR105497, based on the probation officer's calculation that defendant had spent 360 days in actual custody. The parties agree that the mathematical calculation was incorrect: defendant should have been credited with 361 days' actual custody, for a total of 722 days' credit. We order the judgment amended to award defendant two additional days' custody credit.

II.

Court Security Fee and Court Facilities Assessment

The parties are correct that the \$40 court security fee imposed in connection with case No. CRF075478 should be reduced to \$20. The version of Penal Code¹ section 1465.8, subdivision (a)(1), in effect in 2007 provided for a \$20 court security fee per conviction. The Legislature intended the statute to apply as of the date of conviction (*People v. Alford* (2007) 42 Cal.4th 749, 754), and defendant was convicted in 2007

¹ Undesignated section references are to the Penal Code.

when he entered his no contest plea. (*People v. Davis* (2010) 185 Cal.App.4th 998, 1001.) Although the Legislature later amended section 1465.8, subdivision (a)(1), to increase the court security fee to \$30 (Stats. 2009, 4th Ex. Sess. 2009-2010, ch. 22, § 29) and then to \$40 (Stats. 2010, ch. 720, § 33), those amendments were not in effect at the time of defendant's conviction. The total court security fee for case Nos. CRF075478 and CFR105497, reflected on the abstract of judgment, must be reduced from \$80 to \$60.

The parties are also correct that the court facilities assessment should not have been imposed in case No. CRF075478, because Government Code section 70373 (Stats. 2008, ch. 388, § 65) was not yet in effect at the time of defendant's conviction in this case. (*People v. Tarris* (2009) 180 Cal.App.4th 612, 628; see also *People v. Davis, supra*, 185 Cal.App.4th at p. 1001; *People v. Castillo* (2010) 182 Cal.App.4th 1410, 1414.)

III.

Amendment of the Abstract of Judgment

The abstract of judgment states that defendant shall pay \$760 on each case in unspecified "fines." Defendant contends, and the People concede, the matters must be remanded to the trial court to enable it to specify the amount and statutory bases for the imposition of all fines and fees. We accept the People's concession.

In *People v. High* (2004) 119 Cal.App.4th 1192, this court stated: "Although we recognize that a detailed recitation of

all the fees, fines and penalties on the record may be tedious, California law does not authorize shortcuts. All fines and fees must be set forth in the abstract of judgment. [Citations.] The abstract of judgment form used here, Judicial Council form CR-290 (rev. Jan. 1, 2003) provides a number of lines for 'other' financial obligations in addition to those delineated with statutory references on the preprinted form. If the abstract does not specify the amount of each fine, the Department of Corrections [and Rehabilitation] cannot fulfill its statutory duty to collect and forward deductions from prisoner wages to the appropriate agency. [Citation.] At a minimum, the inclusion of all fines and fees in the abstract may assist state and local agencies in their collection efforts. [Citation.] Thus, even where the Department of Corrections [and Rehabilitation] has no statutory obligation to collect a particular fee, such as the laboratory fee imposed under Health and Safety Code section 11372.5, the fee must be included in the abstract of judgment. [Citation.]" (*People v. High, supra*, 119 Cal.App.4th at p. 1200.) At sentencing, the trial court did not provide a detailed recitation of the fines and fees imposed and the legal bases for their imposition. Instead, the court said, "[t]he full breakdown of the penalty assessment will be appended to the abstract of judgment." No such detail was provided in, or appended to, the abstract of judgment.

Finally, when in 2007 the court granted defendant probation in case No. CRF075478, it imposed various fines and fees, including a \$200 restitution fine pursuant to section 1202.4, a

\$50 lab fee, and a \$150 drug program fee, plus assessments. Four years later, when sentencing defendant to prison in case No. CRF075478, the trial court also imposed a \$50 lab fee and a \$200 restitution fine pursuant to section 1202.4 in "each felony case to be collected by the Department of Corrections and Rehabilitation," and then said, "[t]he previously ordered restitution fine in 07-5478 remains in full force and effect and now will be collected by the Department of Corrections [and Rehabilitation]." Citing *People v. Chambers* (1998) 65 Cal.App.4th 819, defendant contends the trial court may have improperly imposed at sentencing "second" restitution and lab fees when defendant's probation was revoked. (*Id.* at pp. 820-821.) Although it appears the trial court believed it was complying with *Chambers* when it orally stated that the "previously ordered restitution fine in 07-5478 remains in full force" (see *id.* at p. 822 ["a restitution fine survive[s] the revocation of probation"]), the court also imposed a \$200 restitution fine in "each felony case," which arguably represents a separate, duplicative, fine.

To resolve this issue, the parties agree the abstract of judgment should reflect that the restitution fine, lab fee, drug program fee, and penalty assessments imposed in case No. CRF075478 are as previously imposed on December 6, 2007. We agree. (See e.g., *People v. Cropsey* (2010) 184 Cal.App.4th 961, 965-966 ["[w]here a restitution fine(s) has been previously imposed, the trial court should simply say, 'The abstract of

judgment should reflect the restitution fine(s) previously imposed'"].)

DISPOSITION

The judgment is modified in case No. CRF075478 to reduce the court security fee imposed from \$40 to \$20 and to strike the \$30 court facilities assessment. In case No. CFR105497, the judgment is modified to award defendant 722 total days' custody credit. In all other respects, the judgment is affirmed.

The trial court shall prepare an amended abstract of judgment reflecting the changes in judgment; it shall also identify the amount and legal basis for each fine, fee, and penalty imposed, and indicate (as applicable) that the fines, fees, and assessments imposed in case No. CRF075478 are as previously ordered on December 6, 2007. Thereafter, the court shall forward a certified copy of the amended abstract of judgment to the California Department of Corrections and Rehabilitation.

_____ HOCH, J.

We concur:

_____ RAYE, P. J.

_____ MAURO, J.