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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

ROY ANTHONY MATAGORA,

Defendant and Appellant.

C068908

(Super. Ct. No.
NCR81053)

In July 2011 defendant Roy Anthony Matagora pleaded guilty to transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a)) and admitted a prior serious felony conviction (Pen. Code,¹ §§ 667, subs. (b) through (i), 1170.12, subs. (a)-(d)) in exchange for a stipulated sentence of four years in state prison and the dismissal of an enhancement for

¹ References to undesignated sections are to the Penal Code.

having served a prior prison term (§ 667.5, subd. (b)). In August he was sentenced to the four-year term and the court imposed a restitution fine of \$400 in accordance with section 1202.4. Defendant filed a timely notice of appeal.

Relying on *People v. Walker* (1991) 54 Cal.3d 1013 (*Walker*), defendant contends the \$400 mandatory restitution fine must be reduced to \$200, the statutory minimum for such fines. We agree that the case resembles *Walker*, but disagree that here a reduction is necessary.

In *Walker*, the defendant entered into a plea bargain whereby he pled guilty to attempted use of a destructive device in exchange for a stipulated sentence of five years and the dismissal of another count. (*Walker, supra*, 54 Cal.3d at pp. 1018-1019.) In accepting the defendant's plea, the court neither admonished him pursuant to section 1192.5 nor told him that a direct consequence of his plea required imposition of a restitution fine with a minimum of \$100 and a maximum of \$10,000. (*Id.* at pp. 1022, 1025.) The defendant was sentenced to five years in prison and the trial court imposed a \$5,000 restitution fine. (*Id.* at p. 1019.) The *Walker* court held that the \$5,000 restitution fine was not part of the bargain; that \$5,000 was a significant deviation from the terms of the bargain; and that the appropriate remedy was to reduce the restitution fine to the statutory minimum, \$100. (*Id.* at pp. 1029-1030.)

Walker set forth the general rule that "[w]here the restitution fine significantly exceeds the terms of a *negotiated*

plea, and the section 1192.5^[2] admonition is not given, the error is not waived by acquiescence and may not be deemed harmless." (*Walker, supra*, at p. 1030, original italics.) The "significance" of the imposition of a term which exceeds the plea agreement is determined "in the context of the plea bargain as a whole" (*Id.* at p. 1024.)

In the present case, in accepting defendant's plea, the trial court did not admonish defendant pursuant to section 1192.5. However, the court did advise defendant that "[t]he maximum penalty for this offense is eight years in State Prison and fines totaling up to \$20,000." It did not advise him that a minimum restitution fine of \$200 was required. Although the probation officer's report recommended a restitution fine of \$400, it was just that -- a recommendation.

While the circumstances of the present case are similar to those of *Walker*, there is a clear difference. The variance from the plea bargain in *Walker* was \$5,000 and in the present case the variance was \$200. Defendant's maximum exposure in this case was nine years in state prison plus a restitution fine of up to \$10,000. We conclude that not only is the \$200 difference

² In pertinent part, section 1192.5 provides: "If the court approves of the plea, it shall inform the defendant prior to the making of the plea that (1) its approval is not binding, (2) it may, at the time set for the hearing on the application for probation or pronouncement of judgment, withdraw its approval in the light of further consideration of the matter, and (3) in that case, the defendant shall be permitted to withdraw his or her plea if he or she desires to do so."

"insignificant" when considered in the context of the entire plea bargain, but that even if defendant had been informed of the mandatory minimum, the information would not have affected his willingness to plead. Consequently, the error was harmless.

DISPOSITION

The judgment is affirmed.

NICHOLSON, Acting P. J.

We concur:

BUTZ, J.

DUARTE, J.