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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

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THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ARNOLD STEPHENS,

Defendant and Appellant.

C069333

(Super. Ct. Nos.  
NCR71823 & NCR81889)

Appointed counsel for defendant Richard Arnold Stephens has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We find errors that require modification of the judgment to include mandatory fines and fees not imposed. We shall affirm the judgment as modified.

**BACKGROUND**

Defendant received welfare benefits for his minor daughter from April 2006 to April 2007, when he was not, in fact, living with or caring for her. As a result, he received \$5,478 to

which he was not entitled. Defendant also forged his mother's signature on a document which falsely claimed he had been paying her \$600 a month in rent.

Defendant pled guilty in Tehama County case No. NCR71823 to welfare fraud (Welf. & Inst. Code, § 10980, subd.(c)(2)) and forgery (Pen. Code, § 470). On September 10, 2007, the trial court sentenced him to the middle term of two years for welfare fraud and a consecutive eight months for forgery, suspended execution of the sentence, and placed him on five years of formal probation.

On May 26, 2011, defendant was found in possession of 53 marijuana plants. He admitted violating probation in Tehama County case No. NCR71823, pleaded guilty to cultivating marijuana (Heath and Saf. Code, § 11358) and admitted a prior strike (Pen. Code, § 1170.12) in Tehama County case No. NCR81889.

On August 29, 2011, the trial court sentenced defendant to the low term of 16 months for cultivating marijuana, doubled due to the strike, in Tehama County case No. NCR81889. The trial court ordered the two years imposed for welfare fraud in Tehama County case No. NCR71823 to run concurrently to the sentence in Tehama County case No. NCR81889, and the eight months for forgery to run consecutively, for an aggregate term of 40 months.

Defendant was awarded 120 actual days and 60 conduct days on case No. NCR71823, and 91 actual days and 44 conduct days on case No. NCR81889.

## DISCUSSION

Defendant appeals. His request for a certificate of probable cause was denied. (Pen. Code, § 1237.5.) Counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant. We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

We do, however, find error that requires modification of the judgment.

When defendant was first sentenced in Tehama County case No. NCR71823, the trial court imposed a \$400 restitution fine, a \$400 stayed probation revocation fine, a \$40 court security fee, and ordered victim restitution in the amount of \$5,478, as recommended in the probation report. The probation report prepared for the second sentencing recommended the trial court enforce the previously imposed fines and fees, as well as the \$400 probation revocation fine. The probation report also recommended the trial court impose a \$400 restitution fine, a \$400 stayed parole revocation fine, \$180 for the criminal lab fee and assessments, \$360 for the drug program fee and assessments, a \$30 court security fee, and a \$30 criminal conviction assessment in Tehama County case No. NCR81889.

The fines and fees in Tehama County case No. NCR71823 are appropriately included in the judgment because the trial court lifted the stay on execution of the previously imposed sentence which included those fines and fees. However, although the abstract of judgment reflects the incorporation of the recommended fines and fees in Tehama County case No. NCR81889, the trial court (apparently inadvertently) failed to incorporate them orally on the record. The oral pronouncement is the actual rendition of judgment; the minutes and abstract cannot add anything substantive to it. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Zackery* (2007) 147 Cal.App.4th 380, 387-388.) We are, however, able to modify the judgment on appeal with respect to *mandatory* impositions (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1157), so we shall order the mandatory minimum fines and fees overlooked in oral rendition of judgment included.

Accordingly, in Tehama County case No. NCR81889, the judgment shall include the minimum \$200 restitution fine, \$200 stayed parole revocation fine, \$180 for the criminal lab fee and assessments, \$30 court security fee, and \$30 criminal conviction. The abstract of judgment must reflect this modification.

#### **DISPOSITION**

The judgment is modified to incorporate the fines and fees set forth herein. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of

judgment and forward a certified copy to the Department of  
Corrections and Rehabilitation.

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DUARTE \_\_\_\_\_, J.

We concur:

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BLEASE \_\_\_\_\_, Acting P. J.

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MAURO \_\_\_\_\_, J.