

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL WAYNE PRICE,

Defendant and Appellant.

C070145

(Super. Ct. No.
SF109084A)

Appointed counsel for defendant Carl Wayne Price asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We will correct an error in the abstract of judgment, but we find no other arguable error that would result in a disposition more favorable to defendant. Accordingly, we will affirm the judgment.

Because the matter was resolved by plea and defendant waived referral to probation, the background is taken from the amended information filed in September 2008.

Defendant drove a vehicle in July 2008 with a blood alcohol level of 0.08 percent or greater. He had three prior convictions for the same conduct within the previous 10 years. On or about that same day, defendant violated a protective order issued in a pending criminal proceeding involving domestic violence. He had previously been convicted of a prior violation of another protective order issued in a pending criminal proceeding involving domestic violence.

Defendant pleaded no contest to driving with a blood-alcohol level of 0.08 percent or greater (Veh. Code, § 23152, subd. (b) -- count 3) and he admitted the prior convictions alleged in count 3. (Veh. Code, § 23550.) In addition, defendant pleaded no contest to contempt of court. (Pen. Code, § 166, subd. (c)(4); count 5)¹ The trial court dismissed other counts and enhancements.

The trial court sentenced defendant to prison for a stipulated term of three years eight months and awarded him 75 days of custody credit and 37 days of conduct credit. The trial court also ordered defendant to pay a \$2,323 fine which included a \$200 restitution fund fine pursuant to section 1202.4, and a

¹ Undesignated statutory references are to the Penal Code.

\$200 restitution fund fine pursuant to section 1202.45 which the trial court suspended unless parole is revoked. The trial court subsequently denied defendant's ex parte motion to convert his fine to custody time.

II

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

Our review discloses a clerical error on the abstract of judgment. The abstract of judgment indicates a \$2,323 restitution fine pursuant to section 1202.4, subdivision (b), but the trial court orally imposed "a fine of \$2,323 which includes the restitution fund fine." The trial court also orally imposed "a \$200 restitution fund fine which is stayed pending successful completion of parole."

The suspended and unsuspended restitution fund fines must be the same amount. (§ 1202.45.) We thus construe the \$2,323 fine to consist of a \$2,123 penal fine pursuant to section 1202.4, subdivision (a)(2) and a \$200 restitution fund fine pursuant to section 1202.4, subdivision (b). We will direct the trial court to correct the abstract of judgment.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect a \$2,123 penal fine pursuant to section 1202.4, subdivision (a)(2), a \$200 restitution fund fine pursuant to section 1202.4, subdivision (b), and a \$200 restitution fund fine pursuant to section 1202.45 which is suspended unless parole is revoked. The trial court shall forward a certified copy of the corrected abstract of judgment to the California Department of Corrections and Rehabilitation.

MAURO, J.

We concur:

ROBIE, Acting P. J.

HOCH, J.