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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO ORDONEZ,

Defendant and Appellant.

C070401

(Super. Ct. No.
CRF110921)

Defendant Pedro Ordonez contends that after recalling his jail sentence and resentencing him to prison, the trial court erred in imposing (1) a second, higher restitution fine, and (2) a parole revocation fine higher than the original restitution fine. The People agree and so do we. We will affirm the judgment as modified.

BACKGROUND

Defendant pleaded no contest to receiving stolen property (Pen. Code, § 496, subd. (a); count 2)¹ and possession of an illegal weapon (§ 12020, subd. (a)(1); count 6). The trial court sentenced him to jail and ordered him to pay a \$200 restitution fine pursuant to section 1202.4, subdivision (b).

The trial court subsequently recalled defendant's sentence pursuant to section 1170, subdivision (d), because defendant had been sentenced to jail but his plea to section 12020 required a prison term. The trial court resentenced defendant to state prison.

Recognizing that the Legislature increased the minimum restitution fine in the interim, the trial court imposed a \$240 restitution fine pursuant to section 1202.4, subdivision (b) and, because defendant was now sentenced to state prison, imposed (and stayed) a parole revocation fine pursuant to section 1202.45. The trial court verbally imposed a \$200 parole revocation fine, but the minute order and abstract of judgment indicate a \$240 parole revocation fine.

DISCUSSION

In October 2011, when defendant was originally sentenced, section 1202.4, subdivision (b)(1) provided for a minimum restitution fine of \$200 for a person convicted of a felony. (§ 1202.4, subd. (b)(1); Stats. 2011, ch. 358, § 1, effective

¹ Undesignated statutory references are to the Penal Code.

Jan. 1, 2012.) If a person is committed to state prison and his sentence includes a period of parole, section 1202.45 requires the trial court to impose a parole revocation fine "in the same amount as" the restitution fine imposed under section 1202.4, subdivision (b).

The triggering event for imposition of the section 1202.4 restitution fine is conviction (*People v. Chambers* (1998) 65 Cal.App.4th 819, 822) and a resentencing pursuant to section 1170 relates back to the date of the original sentence. (*In re Quinn* (1988) 206 Cal.App.3d 179, 182-183; see also *People v. Blount* (2009) 175 Cal.App.4th 992, 998.)

Accordingly, we will modify the judgment, reducing the section 1202.4 restitution fine to \$200 (the amount originally imposed), and direct the trial court to amend the abstract of judgment to reflect this modification. We will also direct the trial court to correct the minute order for sentencing and the abstract of judgment to reflect the trial court's oral imposition of a stayed \$200 parole revocation fine which is correct in light of our modification reducing the restitution fine to \$200. (See *People v. Mesa* (1975) 14 Cal.3d 466, 471.)

DISPOSITION

The judgment is modified to reduce the section 1202.4, subdivision (b) restitution fine to \$200. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect this modification, and to correct the minute order for sentencing and the abstract of judgment to reflect the trial court's oral imposition of a

stayed \$200 parole revocation fine pursuant to section 1202.45.
The trial court is further directed to forward a certified copy
of the amended and corrected abstract of judgment to the
California Department of Corrections and Rehabilitation.

_____ MAURO _____, J.

We concur:

_____ ROBIE _____, Acting P. J.

_____ HOCH _____, J.