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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

SIRENA YEVETTE WOODS,

Defendant and Appellant.

C070417

(Super. Ct. No. 11F05418)

Defendant Sirena Yevette Woods pleaded no contest to bringing marijuana and hashish into a prison, and was placed on probation. At sentencing, the trial court imposed a \$240 restitution fine pursuant to Penal Code section 1202.4 (statutory citations that follow are to the Penal Code unless otherwise indicated), a fine the court stated it understood to be “the minimum.” It then imposed and stayed a probation revocation restitution fine in the same amount, pursuant to section 1202.44.

On appeal, defendant contends these \$240 fines should both be reduced to \$200, the “minimum” fine that could be imposed pursuant to sections 1202.4 and 1202.44 when she committed her crime, because to do otherwise violates ex post facto principles. The

People concede the error, and agree that the restitution fines should be reduced to \$200. We also agree.

In August 2011, when defendant committed her crime, 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, eff. Jan. 1, 2012.) If a person is also granted probation, section 1202.44 requires the trial court to impose a probation revocation restitution fine “in the same amount as” the restitution fine imposed under section 1202.4, subdivision (b). (§ 1202.44.)

Federal and state Constitution ex post facto clauses (U.S. Const., art. I, § 10, cl. 1; Cal. Const., art. I, § 9) prohibit legislation “ ‘which makes more burdensome the punishment for a crime, after its commission . . . .’ ” (*Collins v. Youngblood* (1990) 497 U.S. 37, 42 [111 L.Ed.2d 30, 39]; see also *People v. McVickers* (1992) 4 Cal.4th 81, 84.) And a “restitution fine qualifies as punishment for purposes of the prohibition against ex post facto laws.” (*People v. Saelee* (1995) 35 Cal.App.4th 27, 30; see also *People v. Downing* (1985) 174 Cal.App.3d 667, 672 [ex post facto clause prohibited section 1202.4 restitution fine where crime was committed before operative date of statute].) Here, the legislation authorizing an increase in the amount of the minimum restitution fine from \$200 to \$240 became effective after the date of commission of the defendant’s crime. Accordingly, the section 1202.4, subdivision (b) fine must be reduced to \$200, and the corresponding 1202.44 fine must be reduced to the same amount.

#### DISPOSITION

The judgment is modified to reduce to \$200 the section 1202.4, subdivision (b) restitution fine and the section 1202.44 probation revocation fine. As modified, the judgment is affirmed. The trial court is directed to correct the abstract of judgment to

reflect the changes in judgment, and to forward a certified copy of the amended abstract of judgment to the California Department of Corrections and Rehabilitation.

\_\_\_\_\_ HULL \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.