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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

EARL RAY HUGHES,

Defendant and Appellant.

C070675

(Super. Ct. No. NCR81803)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436.¹ Having reviewed the record as required by *People v. Wende*, we modify the judgment to include the mandatory parole revocation restitution fine, which was omitted by the trial court. We also direct the court to separately list in the abstract of judgment all fines,

¹ Counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. 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 of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

fees and penalties that comprise the \$2,175 fine imposed for the violation of Vehicle Code section 23153, subdivision (b) and affirm as modified.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was charged by amended information with vehicular manslaughter without gross negligence (count I; Pen. Code, § 191.5, subd. (b)); driving under the influence causing injury (count II; Veh. Code, § 23153, subd. (a)); driving with a blood-alcohol level of .08 percent or more causing injury (count III; Veh. Code, § 23153, subd. (b)); possession of an assault weapon (count IV; Pen. Code, former § 12280, subd. (b)); and misdemeanor driving without a license (count V; Veh. Code, § 12500, subd. (a)). As to counts II and III, it was alleged that defendant proximately caused bodily injury to more than one victim (Veh. Code, § 23558) and personally inflicted great bodily injury on a victim (Pen. Code, § 12022.7, subd. (a)).

After initially pleading not guilty, defendant entered a plea of guilty to counts I and III and admitted the great bodily injury enhancement on the latter count, with the understanding that the remaining three counts and the special allegation would be dismissed and he would receive a stipulated state prison term of five years eight months.

According to the colloquy at the change of plea hearing, on or about May 20, 2011, while driving with a blood-alcohol level of .08 percent or more, defendant made an unsafe or unlawful turn, killing Danny Mendoza and inflicting great bodily injury upon Garus Fowler.

The trial court sentenced defendant to the stipulated prison term of five years eight months, consisting of the two-year midterm on count I, eight months (one-third the midterm) consecutive on count III, and three years consecutive for the great bodily injury enhancement. The court awarded defendant 205 days of presentence custody credit (179 actual days and 26 conduct days). The court imposed a \$400 restitution fine (Pen.

Code, § 1202.4, subd. (b)). The court also imposed a \$2,175 fine for the violation of Vehicle Code, § 23153, subdivision (b), which included the base fine and unspecified assessments and fees.²

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant. However, we have found sentencing problems that require modification of the judgment and remand.

It is well settled that the trial court must recite the statutory basis for all fees and fines on the record at sentencing. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200-1201.) Here, the trial court did not do so, and problems resulted.

First, the trial court failed to impose a suspended parole revocation restitution fine (Pen. Code, § 1202.45) in the same amount as the restitution fine (Pen. Code, § 1202.4, subd. (b)). The fine under Penal Code section 1202.45 is mandatory in every case where a prison term includes a period of parole. (*People v. Tillman* (2000) 22 Cal.4th 300, 302; *People v. Rodriguez* (2000) 80 Cal.App.4th 372, 375-378; *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1255-1256.) Where a fine under Penal Code section 1202.4, subdivision (b) has been imposed, the failure to impose a fine under Penal Code section 1202.45 results in an unauthorized sentence, which we may correct in the first instance on appeal (*People v. Rodriguez, supra*, 80 Cal.App.4th at p. 376).³

² Rather than spelling out the fines and fees, the court said only: “All fines and fees will be as recommended” (presumably in the probation report).

³ The probation report, whose recommendations as to fines and fees the trial court followed, proposed that defendant’s sentence be served in county jail under Penal Code section 1170, subdivision (h)(5)(A). Since parole is not included in sentences imposed under this statutory scheme (Pen. Code, § 3000, subd. (a)(1) [parole applies to “sentence resulting in imprisonment in the state prison”]), the report did not propose a parole revocation restitution fine.

At sentencing, the trial court observed that a prison sentence was mandated because the level of bodily injury inflicted made count I a serious felony. (Pen. Code, § 1192.7,

Second, although the probation report enumerates all the components of the aggregate fine imposed for the violation of Vehicle Code section 23153, subdivision (b) and the court orally imposed all fines and fees “as recommended,” the abstract of judgment does not separately list those fines, assessments and fees.

We therefore remand the matter to the trial court with directions to prepare an amended abstract of judgment that includes the mandatory \$400 suspended parole revocation restitution fine (Pen. Code, § 1202.45) and enumerates all components of the aggregate \$2,175 fine. In all other respects, the judgment and sentence are affirmed.

DISPOSITION

The matter is remanded to the trial court with directions to prepare an amended abstract of judgment that includes the mandatory fine under section 1202.45 and enumerates all components of the fine imposed for the violation of Vehicle Code section 23153, subdivision (b). As modified, the judgment is affirmed.

MURRAY, J.

We concur:

BUTZ, Acting P. J.

DUARTE, J.

subd. (c)(8).) But because the court simply cited to the probation report for the “recommended” fines and fees, apparently without reexamining it, the court overlooked the report’s omission of a parole revocation restitution fine.