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

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THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT RAINBOW NELSON,

Defendant and Appellant.

C070769

(Super. Ct. No.  
MC YK CR BF 11-1634)

Defendant Robert Rainbow Nelson entered a negotiated plea of guilty to illegally taking a vehicle and being an unlicensed driver, and was placed on formal probation.

On appeal, defendant contends the trial court imposed at sentencing various nonmandatory fees that were not included in the plea agreement. The People agree that discretionary fees not included in the plea agreement should be stricken from the order of probation. We agree with the parties and shall direct the order of probation to be amended.

## PROCEDURAL BACKGROUND

In connection with his agreement to enter a plea in this matter, defendant initialed and signed a written change of plea form.

Under the heading “Restitution, Statutory Fees, and Assessments,” defendant acknowledged on the change of plea form that he would be ordered to pay—in an amount yet to be determined—a fine directed to the victim restitution fund, restitution to the actual victims of the crimes, restitution to the state victims of crime fund, and a court security fee. No other fines or fees were addressed in the plea agreement. Lines on which additional or “other” fines and/or fees could be written—including one marked “An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set”—were left blank. The trial court accepted defendant’s guilty plea.

At sentencing, the trial court granted defendant formal probation. The trial court stated it would “reserve jurisdiction” on the issue of whether defendant has the ability to reimburse the county for attorney services and to pay “the various fines and fees.” It ultimately imposed nonmandatory fines and fees in the following amounts: \$650 for attorney fees; \$420 for preparation of the presentence report; \$40 each month for probation supervision; and \$148 for a booking fee.<sup>1</sup>

## DISCUSSION

Plea agreements are interpreted in accordance with the rules of contract. (*People v. Toscano* (2004) 124 Cal.App.4th 340, 344.) “[B]oth parties . . . must abide by the

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<sup>1</sup> Defendant’s failure to object at sentencing does not constitute forfeiture of his claim of error; the trial court failed to advise defendant that, in the event it did not approve the plea agreement, he would be permitted to withdraw his plea. (See Pen. Code, § 1192.5; *People v. Villalobos* (2012) 54 Cal.4th 177, 182 (*Villalobos*) [because the court did not give a “section 1192.5 admonition,” defendant’s failure to object at sentencing did not result in forfeiture of claim on appeal].)

terms of the agreement.” (*People v. Walker* (1991) 54 Cal.3d 1013, 1024 (*Walker*), overruled on other grounds by *Villalobos, supra*, 54 Cal.4th at p. 183.) “[M]aterial terms of the agreement cannot be modified without the parties’ consent.” (*People v. Martin* (2010) 51 Cal.4th 75, 80.) The appellate court applies the standards of review applicable to contracts generally. (*Toscano, supra*, 124 Cal.App.4th at p. 345.) “[T]he ‘interpretation of a contract is subject to de novo review where the interpretation does not turn on the credibility of extrinsic evidence.’ ” (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 520.)

Due process applies both to the procedure of accepting the plea and to implementation of the bargain itself. “[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” (*Santobello v. New York* (1971) 404 U.S. 257, 262 [30 L.Ed.2d 427, 433].) This does not mean that any violation of the agreement is constitutionally impermissible. To violate due process, “the variance must be ‘significant’ in the context of the plea bargain as a whole.” (*Walker, supra*, 54 Cal.3d at p. 1024.)

“A violation of a plea bargain is not subject to harmless error analysis. A court may not impose punishment significantly greater than that bargained for by finding the defendant would have agreed to the greater punishment had it been made a part of the plea offer. ‘Because a court can only speculate why a defendant would negotiate for a particular term of a bargain, implementation should not be contingent on others’ assessment of the value of the term to defendant. [¶] . . . [¶] Moreover, the concept of harmless error only addresses whether the defendant is prejudiced by the error. However, in the context of a broken plea agreement, there is more at stake than the liberty of the defendant or the length of his term. “At stake is the honor of the government[,] public

confidence in the fair administration of justice, and the efficient administration of justice . . . .” ’ ” (Walker, supra, 54 Cal.3d at p. 1026.)

In view of defendant’s limited resources, we cannot say that the court’s imposition of over \$1,250 in fees, which were not contemplated by the plea agreement, was an insignificant departure from that agreement. (Cf. *People v. Martin*, supra, 51 Cal.4th at p. 80.) Nor are the fees imposed mandated by statute. (Cf. *Villalobos*, supra, 54 Cal.4th at p. 183 [“mere silence by the parties and trial court concerning a statutorily mandated punishment does not make exclusion of the punishment a negotiated term of a plea agreement”].) Under these circumstances, we agree with the parties that the fees should be stricken from the order of probation as imposed in violation of the plea agreement.

#### **DISPOSITION**

The following fees imposed by the February 21, 2012 order of probation are ordered stricken: \$650 for attorney fees; \$420 for preparation of the presentence report; \$40 each month for probation supervision; and \$148 for a booking fee. The judgment (order of probation) is otherwise affirmed. The trial court shall amend the order of probation to reflect these changes, and send a certified copy of the amended order of probation to defendant and his probation officer.

\_\_\_\_\_ BUTZ \_\_\_\_\_, Acting P. J.

We concur:

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

\_\_\_\_\_ MURRAY \_\_\_\_\_, J.