

NOT TO BE PUBLISHED

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

THE PEOPLE,

Plaintiff and Respondent,

v.

TOMMY E. JOHNSON, JR.,

Defendant and Appellant.

C074814

(Super. Ct. No. 13F02638)

Defendant Tommy E. Johnson, Jr., pleaded no contest to assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(4).) He was sentenced to five years of probation and 180 days in county jail, in addition to various fines and fees. Defendant’s sole contention on appeal is that the trial court erred by imposing a fee of \$702 for a presentencing report in the court’s minute order because the fee was not orally imposed by the court at the sentencing hearing. The Attorney General agrees. We modify the judgment to strike the fee for the presentencing report.

In its written minute order and order of probation, the court ordered defendant to “report to the Department of Revenue Recovery for a financial evaluation and

recommendation of ability to pay costs for and in the amount of \$702.00 for the presentence report” However, the trial court did not orally impose this fee at the sentencing hearing, nor was it listed as one of the conditions of probation. Rather, the written probation conditions referred to by the court, and acquiesced to by defendant, provided that, “If there is reimbursable cost to the County in the disposition of this case for . . . presentence investigation, . . . it is recommended the defendant be ordered to report [to] the Department of Revenue Recovery for a financial evaluation and recommendation of ability to pay said costs.”

The trial court’s oral pronouncement of the sentence controls over the clerk’s minute order. (*People v. Farrell* (2002) 28 Cal.4th 381, 384, fn. 2.) Since the trial court did not orally pronounce the fee for the presentencing report of investigation at the sentencing hearing and it was not included in the written probation conditions imposed by the court, we strike the fee for the presentence report from the minute order and order of probation.

DISPOSITION

We strike the following language from the minute order and order of probation: “\$702.00 for the presentence report and.” As modified, the judgment is affirmed.

BLEASE, Acting P. J.

We concur:

HULL, J.

MAURO, J.