Filed 6/17/15 P. v. Bruce CA3

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>MATTHEW ERNEST BRUCE,<br><br>Defendant and Appellant. | C076869<br><br>(Super. Ct. Nos. 14F258, 11F4201, 12F7021) |

Defendant Matthew Ernest Bruce challenges certain statutory fines imposed in March 2013 as terms and conditions of his probation. He did not, however, *appeal* from the order of probation. He filed his notice of appeal in July 2014, after the trial court revoked his probation and sentenced him to state prison. Thus we lack jurisdiction to review the propriety of the challenged fines. We do, however, have jurisdiction to review the accuracy of the abstract of judgment produced after defendant's 2014 sentencing. After doing so, we agree with the People that the abstract requires correction with respect

to restitution fines imposed by the trial court at the time of sentencing. We will order the abstract corrected and affirm the judgment.

## BACKGROUND

We dispense with a recitation of the facts underlying defendant's convictions because they are unnecessary to the resolution of the instant appeal. We provide the following summary of the pertinent procedural history of the relevant criminal proceedings.

In August 2011, defendant pleaded guilty to possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) in exchange for deferred entry of judgment and dismissal of other charges. In accordance with defendant's plea, the trial court entered an order deferring entry of judgment until August of 2013 pursuant to Penal Code section 1000.[1] The trial court also imposed a diversion restitution fee of $200 and an administrative fee of $300. In January 2012, the People moved for entry of judgment because defendant had failed to report to probation.

In November 2012, defendant pleaded guilty to second degree commercial burglary (§ 459) and admitted he failed to comply with the terms of the deferred entry of judgment in the 2011 case in exchange for a dismissal of other charges and a disposition of local probation. In March 2013, the trial court suspended imposition of sentence for three years and admitted defendant to formal probation. Among the terms and conditions of defendant's probation, the trial court ordered him to pay a fine of $760, based on a base fine of $200 pursuant to section 672, plus various statutory penalty assessments, fees, and surcharges, and to pay a crime prevention fee of $38, including statutory penalty assessments, fees, and surcharges, apparently pursuant to section 1202.5. The trial court also imposed a restitution fine of $480 (§ 1202.4, subd. (b)), and a probation

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[1] Further undesignated statutory references are to the Penal Code.

revocation restitution fine (§ 1202.44) in the same amount, stayed pending successful completion of probation.

In March 2014, defendant admitted violating his probation in the 2011 and 2012 cases, pleaded guilty to home invasion robbery in concert (§§ 211, 213, subd. (a)(1)(A)), acknowledged the new offense would be a strike, and agreed to limited credits in exchange for a stipulated state prison sentence of seven years four months and a dismissal of other charges. On May 1, 2014, the trial court sentenced defendant according to the terms of his plea to seven years four months in state prison: six years for the 2014 home invasion robbery in concert, a consecutive eight months for the 2012 commercial burglary, and a consecutive eight months for the 2011 possession of a controlled substance. The court awarded defendant 137 days of presentence custody credit and imposed various statutorily permitted and required fines and fees in the 2014 case. The trial court also ordered that defendant pay a single restitution fine of $480 previously imposed in the 2011 and 2012 cases, imposed the previously stayed probation revocation restitution fine of $480 in those cases, and imposed a single additional parole revocation restitution fine (§ 1202.45) of $480 in those cases, stayed pending successful completion of parole. Defendant filed his notice of appeal on July 2, 2014.[2]

## DISCUSSION

### I

### *Jurisdiction*

Defendant contends the trial court erred in the 2012 case by imposing a fine pursuant to section 672 at the time he was granted probation (March 26, 2013) because he

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[2] Defendant's appeal from his May 1, 2014 sentencing is timely, as he mailed his notice of appeal from prison on June 30, 2014. (See *In re Jordan* (1992) 4 Cal.4th 116, 130 [holding prisoner's notice of appeal was constructively filed as of the date he delivered it to the prison authorities, citing prison-delivery rule].)

was also ordered to pay a fine pursuant to section 1202.5. Defendant waited until his probation was revoked and he was sentenced to prison in May 2014 to challenge the trial court's order imposing the fines. The time for defendant to appeal the order imposing the fines has long passed, and we lack jurisdiction to review the order.

Pursuant to section 1237, subdivision (a), a defendant may appeal from an order granting probation. "In general, an appealable order that is not appealed becomes final and binding and may not subsequently be attacked on an appeal from a later appealable order or judgment. [Citations.] Thus, a defendant who elects not to appeal an order granting or modifying probation cannot raise claims of error with respect to the grant or modification of probation in a later appeal from a judgment following revocation of probation. [Citations.]" (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421; see also *People v. Dagostino* (2004) 117 Cal.App.4th 974, 997 [failure to file a timely notice of appeal from the court's order granting conditions of probation bars challenge to conditions from being raised on appeal from a later order revoking probation].) Here, defendant failed to timely appeal the order granting probation in which the fines were imposed. (See Cal. Rules of Court, rule 8.308(a) ["notice of appeal . . . must be filed within 60 days after the rendition of the judgment or the making of the order being appealed"].) Thus, defendant is jurisdictionally foreclosed in this court from raising any issues relative to the fines imposed in March 2013.

II

*Abstract of Judgment*

The People contend that the amended abstract of judgment incorrectly reflects that defendant was ordered to pay restitution fines of $480 (§ 1202.4, subd. (b)), probation revocation restitution fines of $480 (§ 1202.44), and parole revocation restitution fines of $480 (§ 1202.45) each in both the 2011 and 2012 cases. As the trial court orally imposed these fines at the May 2014 sentencing, we have jurisdiction to review these fines. We agree with the People that the abstract does not accurately reflect the trial court's oral

order regarding these fines. The trial court ordered a single restitution fine of $480, a single probation revocation restitution fine of $480, and a single parole revocation restitution fine of $480 collectively for both cases. Therefore, the abstract of judgment must be corrected to reflect that, in addition to the correctly reflected restitution fines ordered in case No. 14F258, defendant is to pay a single restitution fine of $480, a single probation revocation restitution fine of $480, and a single parole revocation restitution fine of $480 in case Nos. 11F4201 and 12F7021, to match the trial court's oral pronouncement of these fines.

**DISPOSITION**

The judgment is affirmed. The clerk of the trial court is directed to prepare a corrected abstract of judgment as described by our opinion and to forward a certified copy of that abstract to the Department of Corrections and Rehabilitation.

DUARTE, J.

We concur:

RAYE, P. J.

HOCH, J.