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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHEN DAVID NARBAIZ, JR.,

Defendant and Appellant.

C078194, C078428

(Super. Ct. Nos. CRF120272,
CRF144336)

Appointed counsel for defendant Nathan David Narbaiz, Jr., has asked this court to review the records in two separate cases, which we consolidated on appeal, to determine whether there exist any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). We will modify the judgment in case No. CRF120272 (the burglary case) and direct corrections to the abstract of judgment in case No. CRF144336 (the robbery case).

BACKGROUND

The Burglary Case

In 2012, defendant was convicted of burglary. (Pen. Code, § 459.)¹ The trial court granted him a three-year term of probation. Between May 2012 and August 2014, the trial court revoked and reinstated defendant's probation on three separate occasions. Among the terms and conditions of defendant's probation was the requirement that he obey all laws. On September 14, 2014, based on the allegations in the complaint filed in the robbery case, the People filed a petition to revoke defendant's probation.

The Robbery Case

On August 30, 2014, defendant and two others drove a vehicle they knew to be stolen, stopping to rob a victim from whom defendant demanded a wallet at knifepoint. Defendant pleaded no contest to robbery (§§ 211, 212.5, subd. (c)) and unauthorized use of a vehicle (Veh. Code, § 10851, subd. (a)). He admitted he used a deadly weapon in committing the robbery. (§ 12022, subd. (b)(1).) Defendant also admitted he violated probation in the burglary case by failing to obey all laws.

The trial court sentenced defendant to the negotiated term of six years eight months in prison in the robbery case. The court ordered defendant to pay a restitution fine of \$600 (§ 1202.4, subd. (b)), a \$600 parole revocation fine, stayed pending successful completion of parole (§ 1202.45), an \$80 court operations fee (§ 1465.8, subd. (a)(1)), and a \$60 court facilities assessment (Gov. Code, § 70373). The court awarded defendant 151 days of presentence custody credit.

¹ Further undesignated statutory references are to the Penal Code.

In the burglary case, the trial court sentenced defendant to a concurrent term of three years in prison and ordered the “previously ordered restitution fine . . . will remain in full force and effect.” The court did not orally reference any other restitution fines, stayed or otherwise, but did award defendant 203 days of presentence custody credit.

Defendant filed a timely notice of appeal, but did not obtain a certificate of probable cause.

DISCUSSION

Counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant 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. We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant. We have, however, discovered minor errors which require correction.

In the burglary case, the minute order and abstract of judgment reflect a \$240 restitution fine (§ 1202.4, subd. (b)), and matching (stayed) parole revocation fine (§ 1202.45), as well as a \$240 probation revocation fine “now due, probation having been revoked” (§ 1202.44).² The record does not reflect that the trial court orally referenced

² Defendant did not provide us with the transcript or a resulting minute or probation order from his initial grant of probation in the burglary case. “[T]he abstract of judgment is not itself the judgment of conviction, and cannot prevail over the court’s oral pronouncement of judgment to the extent the two conflict. [Citations.] However, the abstract is a contemporaneous, statutorily sanctioned, officially prepared clerical *record* of the conviction and sentence. . . . As such, ‘the Legislature intended [it] to [accurately] summarize the judgment.’ [Citation.] When prepared by the court clerk, at or near the time of judgment, as part of his or her official duty, it is cloaked with a presumption of regularity and reliability. (Evid. Code, §§ 660, 664; see *id.*, § 1280.)” (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070.) Here, we have no basis for concluding that the clerk did not accurately and reliably record the amounts of the previously-imposed fines.

the latter two of these three fines. Failure to lift the stay on the previously imposed probation revocation fine is an unauthorized sentence (*People v. Guiffre* (2008) 167 Cal.App.4th 430, 434-435), as is the failure to impose and stay a corresponding parole revocation fine in the same amount as the restitution fine in this case. (*People v. Andrade* (2002) 100 Cal.App.4th 351, 357.) We modify the judgment to reflect those fines. (§ 1260.)

In the robbery case, the abstract of judgment and minute order reflect the imposition of these fines and fees in amounts appropriate for only one count of conviction instead of two. Defendant sustained two felony convictions in the robbery case; the fines and fees should be in the amounts orally pronounced by the trial court (which we have set forth *ante*). Accordingly, we shall direct the trial court to correct the abstract of judgment and suggest that it correct its internal records (minute orders) to accurately reflect the fines and fees orally imposed. (*People v. Mitchell* (2001) 26 Cal.4th 181, 188.)

DISPOSITION

In the burglary case, the judgment is modified to lift the stay on the probation revocation fine and impose and stay a \$240 parole revocation fine. As modified, the judgment is affirmed. No changes to the abstract are required.

In the robbery case, the judgment is affirmed. The trial court is directed to prepare a corrected abstract that reflects the fines and fees orally imposed and to forward a certified copy thereof to the Department of Corrections and Rehabilitation.

DUARTE, J.

We concur:

HULL, Acting P. J.

BUTZ, J.