

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL WALLACE BROWN,

Defendant and Appellant.

C078573

(Super. Ct. No. CM040659)

Despite being represented in all relevant proceedings by retained counsel, the trial court imposed a \$157.50 “public defender fee” during sentencing. Defendant Michael Wallace Brown contends this fee was improper. We shall strike the public defender fee and affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

A jury found defendant guilty of possession of methamphetamine, battery upon a peace officer, resisting a peace officer, and misdemeanor battery on a peace officer. The jury found defendant not guilty of possession of a billy and felony battery on a peace

officer. The jury was unable to reach a verdict and a mistrial was declared on carrying a dirk or dagger. (Pen. Code, § 21310.) Pursuant to a plea agreement, defendant later pled no contest to a misdemeanor charge for this count.

The court sentenced defendant to five years in prison, one year for each count. The court also imposed various fines and fees, including a public defender fee of \$157.50. The court asked defendant whether this amount was “reasonable” for his lawyer’s work. Defendant responded he “paid” his lawyer. The court then asked defendant whether the lawyer had done “a good job for you,” and defendant responded, yes.

Throughout the proceedings, defendant was represented by Jesus Rodriguez. Rodriguez appeared on defendant’s behalf during all court proceedings, except during sentencing, when Leo Battle appeared in Rodriguez’s absence. Various clerks’ minutes, including the one reflecting the judgment, note Rodriguez was retained.

DISCUSSION

Defendant contends the trial court improperly imposed a \$157.50 public defender fee, and the People agree.

Penal Code section 987.8 permits a trial court to order a defendant who has received legal assistance at public expense to reimburse some or all of the county’s costs. Because there is no evidence defendant was at any point represented by a public defender or appointed counsel, the \$157.50 fee was unauthorized.

DISPOSITION

The matter is remanded to the trial court with directions to prepare an amended abstract of judgment that omits the \$157.50 public defender fee under Penal Code

section 987.8, and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

/s/
Robie, J.

We concur:

/s/
Nicholson, Acting P. J.

/s/
Renner, J.