

NOT TO BE PUBLISHED

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES NATHAN WHEELER,

Defendant and Appellant.

C080593

(Super. Ct. No. SF129982A)

Defendant James Nathan Wheeler pleaded guilty to inflicting corporal injury on his spouse and being a felon carrying a loaded firearm. (Pen. Code, §§ 273.5, subd. (a), 25850, subd. (c)(1).)¹ He also admitted a prior strike and enhancements for gun use and infliction of great bodily injury. (§§ 1170.12, subd. (b); 12022.5, subd. (a); & 12022.7, subd. (e).) Per the parties' agreement, the court sentenced

¹ Undesignated statutory references are to the Penal Code.

defendant to serve 15 years' imprisonment. The trial court also imposed a "\$500 domestic violence fee."

Defendant contends on appeal the trial court erred in imposing the \$500 domestic violence fee because it is only applicable to defendants who are granted probation, and the People agree. We assume the appeal is operative, strike the \$500 domestic violence fee, and affirm the judgment as modified.

DISCUSSION

We dispense with reciting the facts surrounding defendant's crime, as they are not relevant to the issue raised on appeal. Defendant correctly asserts the trial court erroneously ordered defendant to pay a \$500 domestic violence fee. Although the trial court did not expressly state its statutory authority, we assume the trial court was imposing the fine pursuant to section 1203.097, subdivision (a)(5), the sole statutory section authorizing a \$500 domestic violence fund fee.² This fee is to be imposed only when a defendant is "granted probation." (§ 1203.097, subd. (a)(5); see also *People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1520.) Because defendant was sentenced to prison, the fee was unauthorized.

DISPOSITION

The \$500 domestic violence fee is stricken. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of

² Section 1463.27 authorizes a fine of up to \$250 "upon every fine, penalty, or forfeiture imposed and collected by the courts for a crime of domestic violence," but only if the county board of supervisors has passed a resolution adopting the fine. (§ 1463.27, subd. (a).) The fee imposed was \$500, suggesting this was not the source of the trial court's authority here. The People concede there is no evidence the San Joaquin County Board of Supervisors has adopted the required resolution.

judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

/s/
HOCH, J.

We concur:

/s/
RAYE, P. J.

/s/
MAURO, J.