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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALFREDOE INZUNZA DAMIAN,

Defendant and Appellant.

D059302

(Super. Ct. No. SCE295504)

APPEAL from a judgment of the Superior Court of San Diego County, Peter C.

Deddeh, Judge. Affirmed as modified.

In September 2010, Alfredoe Inzunza Damian entered a negotiated guilty plea to a charge of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1))<sup>1</sup> with personal infliction of great bodily injury (§ 1192.7, subd. (c)(8)). In February 2011, the court placed Damian on three years' probation. Damian appeals, contending that the court erroneously imposed a \$40 court security fee

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<sup>1</sup> All further statutory references are to the Penal Code.

(§ 1465.8, subd. (a)) and that certain probation conditions pertaining to firearms, weapons, ammunition, alcohol and controlled substances are unconstitutionally vague and overbroad because the court failed to include "an express knowledge requirement" as to those conditions. Respondent concedes that the court security fee should be reduced to \$30, and also concedes that, to the extent the contested probation conditions lack the necessary scienter requirement, they should be corrected. We accept the concessions.

At the time Damian entered his guilty plea, section 1465.8, subdivision (a) specified a court security fee in the amount of \$30. The fee was increased to \$40 effective October 19, 2010 (Stats. 2010, ch. 720, § 33), which is after Damian entered his plea and before he was sentenced. The fee must therefore be reduced to \$30. (See *People v. Davis* (2010) 185 Cal.App.4th 998, 1001.)

Among the conditions of probation that the court imposed are that appellant "[n]ot possess a firearm, ammunition, or deadly weapon"; "not use or possess alcohol if directed by the [probation officer]"; and "not use or possess any controlled substance without a valid prescription . . . ." These conditions are unconstitutionally overbroad in that they do not include scienter requirements. (*People v. Patel* (2011) 196 Cal.App.4th 956, 960.) We modify these conditions to state that appellant "[n]ot knowingly possess a firearm, ammunition, or deadly weapon"; "not knowingly use or possess alcohol if directed by the [probation officer]"; and "not knowingly use or possess any controlled substance without a valid prescription . . . ." (*Id.* at p. 961.)

#### DISPOSITION

The \$40 court security fee (§ 1465.8, subd. (a)) is reduced to \$30. Probation conditions 6d., 8b. and 9c. are modified to state, respectively, that appellant "[n]ot knowingly possess a firearm, ammunition, or deadly weapon"; "not knowingly use or possess alcohol if directed by the [probation officer]"; and "not knowingly use or possess any controlled substance without a valid prescription . . . ." As modified, the judgment is affirmed.

AARON, J.

WE CONCUR:

McDONALD, Acting P. J.

McINTYRE, J.