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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JACQUES L. DANIELS,

Defendant and Appellant.

D059842

(Super. Ct. No. SCD203946)

APPEAL from a judgment of the Superior Court of San Diego County, Edward P. Allard III, Judge. Affirmed as modified.

In 2007, Jacques L. Daniels pleaded guilty to two counts of robbery. (Pen. Code, § 211.)¹ The court suspended execution of a four-year prison sentence and sentenced him to three years of formal probation. The court imposed fines and fees, including a \$200 restitution fund fine (§ 1202.4, subd. (b)) and a \$200 probation revocation restitution fine (§ 1202.44), suspended unless probation was revoked. In the present case,

¹ All statutory references are to the Penal Code.

Daniels admitted violating the terms and conditions of his probation. The court revoked his probation and imposed the previously suspended four-year prison sentence, a \$200 probation revocation restitution fine (§ 1202.44), a \$200 parole revocation restitution fine (§ 1202.45), and what appears to be a second \$200 restitution fund fine (§ 1202.4, subd. (b)).

Daniels contends the court erred in imposing a second \$200 restitution fund fine (§ 1202.4, subd. (b)) when his probation was revoked and it should therefore be stricken from the abstract of judgment. He argues that the \$200 restitution fund fine (§ 1202.4, subd. (b)) is only to be imposed once at the time of conviction and remains in force despite revocation of probation. Because the abstract of judgment reflects the imposition of the \$200 restitution fund fine (§ 1202.4, subd. (b)) and the court's language regarding the imposition of the fine was unclear, we agree that the \$200 restitution fund fine (§ 1202.4, subd. (b)) should be stricken from the abstract of judgment.

FACTS

On April 28, 2011, Daniels admitted violating the terms and conditions of his probation. At the sentencing after the probation revocation hearing, the court sentenced him to four years in prison and imposed "a restitution fine pursuant to . . . section 1202.4[, subd.] (b) in the amount of \$200, and the [\$200] fine previously imposed in this case." The court also imposed a \$200 parole revocation restitution fine under section 1202.45, suspended unless Daniels violates the terms and conditions of his parole.

The abstract of judgment reflects the imposition of three \$200 fees: one under section 1202.4 subdivision (b), to be paid forthwith, another "due now" under section 1202.44, and another under section 1202.45 "suspended unless parole is revoked." The minute order is consistent with the abstract of judgment.

DISCUSSION

Section 12024.4, subdivision (b), provides that "[i]n every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine" This fine "may only be imposed once at the time of conviction . . . when the probation [is] initially granted." (*People v. Perez* (2011) 195 Cal.App.4th 801, 805, citing *People v. Chambers* (1998) 65 Cal.App.4th 819, 822.)

It is unclear what fines the court intended to impose on revocation of probation, but the abstract of judgment reflects the imposition of three \$200 fines, including one suspended fine (§ 1202.45) and two fines currently due (§§ 1202.44 & 1202.4, subd. (b).) However, the \$200 restitution fund fine under section 1202.4, subdivision (b), was already imposed at conviction, and therefore is unauthorized if imposed again at the probation revocation. (See *People v. Perez, supra*, 195 Cal.App.4th at p. 805.)

To ensure the court does not impose the \$200 restitution fund fine (§ 1202.4, subd. (b)) on Daniels twice, the court should modify the abstract of judgment to reflect no additional imposition of the section 1202.4, subdivision (b), fine. The abstract of judgment should reflect only the imposition of the \$200 probation revocation restitution fine (§ 1202.44) and the suspended \$200 parole revocation fine (§ 1202.45).

DISPOSITION

The trial court shall amend the abstract of judgment consistent with this opinion.

In all other respects the judgment is affirmed.

McDONALD, Acting P. J.

WE CONCUR:

McINTYRE, J.

AARON, J.