Filed 5/9/12 P. v. Nunez CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. GUILLERMO NUNEZ, Defendant and Appellant.	D060225 (Super. Ct. No. SCD183534)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Gill, Judge. Affirmed as modified.

Guillermo Nunez entered a negotiated guilty plea to two counts of committing a lewd act on a child under 14 (Pen. Code, § 288, subd. (a)).[1] The court sentenced him to two concurrent eight-year upper prison terms. Nunez appeals, contending the $300 sex offender registration fee (§ 290.3) must be reduced to $200. Respondent properly concedes the point.

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1 All further statutory references are to the Penal Code.

Section 290.3, subdivision (a) now states: "Every person who is convicted of any offense specified in subdivision (c) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for commission of the underlying offense, be punished by a fine of three hundred dollars ($300) upon the first conviction or a fine of five hundred dollars ($500) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine." Between September 1, 2002, and January 19, 2004, when Nunez committed the above offenses, the fees were $200 for the first conviction and $300 for the second conviction. To avoid an ex post facto violation, the $300 fine imposed on Nunez must be reduced to $200. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1372.) The sentencing court imposed only one section 290.3 fee, and from the silent record we presume the court determined Nunez did not have the ability to pay a fee for his second conviction. (*People v. Walz* (2008) 160 Cal.App.4th 1364, 1371.)

DISPOSITION

The $300 section 290.3 fee is reduced to $200. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections and Rehabilitation.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.