

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN HENRY JOHNSON II,

Defendant and Appellant.

D060440

(Super. Ct. No. SCD228609)

APPEAL from a judgment of the Superior Court of San Diego County, Joseph P. Brannigan, Judge. Affirmed as modified.

In 2010, John Henry Johnson II entered a negotiated guilty plea to possessing cocaine base (Health & Saf. Code, § 11350, subd. (a)) and admitted serving two prior prison terms (Pen. Code, § 667.5, subd. (b)).¹ The court placed him on three years' probation. The court imposed a \$200 restitution fine (§ 1202.4, subd. (b)) and imposed and suspended a \$200 probation revocation fine (§ 1202.44). The court ordered Johnson

¹ Further statutory references are to the Penal Code unless otherwise specified.

to pay a \$50 criminal lab analysis fee (Health & Saf. Code, § 11372.5) and a \$100 drug program fee (*Id.*, § 11372.7), and deemed "all fines/fees satisfied by credit [for] time served."

In 2011, the court revoked probation and sentenced Johnson to prison for three years four months: the 16-month lower term for possessing cocaine base and one year for each prison prior. The court orally imposed and suspended a \$600 parole revocation fine (§ 1202.45) and ordered Johnson to pay an \$800 probation revocation fine. Additionally, the abstract of judgment states the court imposed a \$600 restitution fine. The court ordered Johnson to pay a \$190 criminal lab analysis fee and a \$570 drug program fee.

Johnson appeals. He contends the \$600 restitution fine must be stricken, the \$800 probation revocation fine must be reduced to \$200 and the \$600 parole revocation fine must be reduced to \$200. Johnson further contends the court lacked authority to impose the \$190 criminal lab analysis fee and the \$570 drug program fee and those fees must be stricken. The People concede these points.

The \$600 restitution fine is unauthorized and must be stricken. (*People v. Perez* (2011) 195 Cal.App.4th 801, 804-805.) The \$600 parole revocation fine must be reduced to \$200 because it must be the same amount as the restitution fine. (§ 1202.45.) The \$800 probation revocation fine was unauthorized and must be stricken, and the suspension of the \$200 probation revocation fine must be lifted. (§ 1202.44; *People v. Guiffre* (2008) 167 Cal.App.4th 430, 434-435.) The \$190 criminal lab analysis fee and the \$570 drug program fee must be stricken. The \$50 criminal lab analysis fee and the

\$100 drug program fee imposed at the time of conviction remain. (Health & Saf. Code, §§ 11372.5, subd. (a), 11372.7, subd. (a).)

DISPOSITION

The judgment is modified to reflect a \$200 restitution fine (§ 1202.4, subd. (b)) and a \$200 parole revocation fine (§ 1202.45) in place of the \$600 fines, and to reflect that the \$200 probation revocation fine (§ 1202.44) is now due. The \$800 probation revocation fine is stricken. The \$190 criminal lab analysis fee (Health & Saf. Code, § 11372.5) and the \$570 drug program fee (*Id.*, § 11372.7) are stricken. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.