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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN SALGADO,

Defendant and Appellant.

D061384

(Super. Ct. No. SCD234597)

APPEAL from a judgment of the Superior Court of San Diego County, Eugenia Eyherabide, Judge. Affirmed as modified with directions.

Juan Salgado entered into a plea agreement under which he pleaded guilty to possession of a controlled substance for sale (Health & Saf. Code,¹ § 11378); transportation of a controlled substance (§ 11379, subd. (a)) and using a false compartment to smuggle drugs (§ 11366.8, subd. (a)). Salgado admitted that the amount of controlled substance involved exceeded 10 kilograms in weight, within the meaning of section 11370.4, subdivision (b)(3).

¹ All further statutory references are to the Health and Safety Code unless otherwise specified.

The parties agreed to a stipulated sentence of 10 years 4 months.

The court sentenced Salgado to the stipulated term of imprisonment in the county jail in accordance with Penal Code section 1170, subdivision (h).

Salgado filed a timely notice of appeal and requested a certificate of probable cause. The trial court denied the request for a certificate of probable cause.

Salgado contends the trial court minutes and the abstract of judgment are incorrect. Specifically, since the sentence imposed was under the so-called "realignment" statute (Pen. Code, § 1170, subd. (h)), he was not committed to "prison" as indicated in the abstract of judgment and the court did not impose a parole revocation fine under Penal Code section 1202.45, since under realignment he would not be subject to "parole." The Attorney General properly concedes that the trial court records are not accurate and must be corrected.²

DISCUSSION

I

SALGADO IS NOT SUBJECT TO A PAROLE REVOCATION FINE

In this case the trial court imposed a restitution fine of \$6,200, which is correctly set forth in the minutes. The court did not impose a parole revocation restitution fine as Salgado was not sentenced to prison and was thus not subject to formal parole. (See Pen. Code, §§ 1170, subd. (h); 3000, et. seq. regarding parole supervision.) However, the minute order reflects a parole revocation restitution fine of \$6,200, purportedly under Penal Code section 1202.45. The parties correctly argue that the minutes are not accurate. Accordingly, we order the court to correct the minutes to delete reference to a parole revocation restitution fine.

² Since the facts of the underlying offense are not relevant to the issues in this appeal we omit the traditional statement of facts

II

THE ABSTRACT OF JUDGMENT IS NOT CORRECT

Once again the parties are in agreement that the trial court's records are incorrect because they do not reflect the impact of Penal Code section 1170, subdivision (h). In this instance the court has filed an abstract of judgment which is labeled "Prison Commitment."

As the parties correctly note, Salgado was not sentenced to prison, but was actually sentenced to the county jail. Accordingly, we will direct the trial court to amend the judgment.

DISPOSITION

The superior court is directed to modify the judgment to eliminate the reference to a "Prison Commitment" and to delete the reference in the minutes to a parole revocation restitution fine in the amount of \$6,200 as reflected in the minutes of the sentencing hearing held on January 24, 2012. In all other respects the judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

McINTYRE, J.