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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID SAWYERS,

Defendant and Appellant.

D061389

(Super. Ct. No. SCE308211)

APPEAL from a judgment of the Superior Court of San Diego County, Lantz Lewis, Judge. Affirmed.

I.

INTRODUCTION

A jury found David Sawyers guilty of one count of assault (Pen. Code, § 240)¹ (count 1), two counts of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)) (counts 2 and 3), and one count of battery with serious bodily injury

¹ Unless otherwise specified, all subsequent statutory references are to the Penal Code.

(§ 243, subd. (d) (count 4). As to counts 2 through 4, the jury found that Sawyers personally used a deadly or dangerous weapon (§ 1192.7, subd. (c)(23)). In addition, as to counts 3 and 4, the jury found that Sawyers personally inflicted great bodily injury within the meaning of section 1192.7, subdivision (c)(8). As to count 4, the jury found that Sawyers personally inflicted great bodily injury within the meaning of section 12022.7, subdivision (a). During the trial, outside the presence of the jury, Sawyers admitted a prior prison term allegation (§ 667.5, subd. (b)).

The trial court sentenced Sawyers to an aggregate term of eight years in state prison. At sentencing, the court stated, "I am imposing the fines, fees, penalties, and assessments that are outlined in the probation officer's report on page 15." The probation report recommended that the trial court impose a restitution fine in the amount of \$6,400 pursuant to section 1202.4, subdivision (b), and that the court impose a parole revocation restitution fine in the amount of \$6,400 pursuant to section 1202.45. The probation report also recommended that the section 1202.45 fine be stayed, unless Sawyer's parole were to be revoked in the future. The abstract of judgment reflects the trial court's imposition of two \$6,400 restitution fines (§§ 1202.4, subd. (b), 1202.45).

On appeal, Sawyers's sole claim is that the trial court did not properly orally pronounce judgment as to the restitution fines imposed pursuant to sections 1202.4, subdivision (b) and 1202.45. Sawyers requests that this court strike the reference to these fines in the abstract of judgment. We affirm the judgment.

II.

FACTUAL BACKGROUND²

Sawyers committed a series of assaults on a husband and wife during a road rage incident in January 2011.

III.

DISCUSSION

Sawyers claims that the trial court's statement at sentencing that it was imposing the "fines, fees, penalties, and assessments that are outlined in the probation officer's report on page 15" does not constitute an adequate oral pronouncement of the two \$6,400 restitution fines referenced at page 15 of the probation officer's report.

1. *Governing law*

" 'Rendition of judgment is an oral pronouncement.' " [Citation.] [¶] " 'A judgment includes a fine. A restitution fine is a fine.' [Citations.]" (*People v. Zackery* (2007) 147 Cal.App.4th 380, 387 (*Zackery*).)

2. *Application*

In this case, by way of its reference to the probation report, the trial court clearly indicated its unequivocal intent to impose a restitution fine in the amount of \$6,400 pursuant to section 1202.4, subdivision (b), and to impose a parole revocation restitution

² We provide an abbreviated summary of the facts of the underlying offenses because they are not relevant to Sawyers's claim on appeal.

fine in the amount of \$6,400 pursuant to section 1202.45.³ We are aware of no authority, and Sawyers has cited none, that indicates that a court may not impose restitution fees by stating that it is imposing the restitution fees outlined in a probation officer's report.

Sawyers does note that several courts have held that it is improper for a trial court to attempt to comply with the requirement in section 1170, subdivision (b) that the court provide a statement of reasons for selecting a term under the determinate sentencing laws by incorporating a probation report.⁴ (See, e.g., *People v. Turner* (1978) 87 Cal.App.3d 244, 247 [discussing former section 1170, subdivision (b)'s requirement that "[t]he court set forth on the record the facts and reasons for imposing" the upper or lower term and concluding, "[a]n incorporation by reference is not a statement of facts and/or reasons by the court and is obviously not on the record"].) Sawyers argues that these cases stand for the principle that "incorporating any part of the probation report is not a 'statement on the record' within the meaning of the sentencing laws."

Sawyers's analogy is not persuasive because it is well established that, in contrast to the requirement that in selecting a term of prison under section 1170, subdivision (b),

³ At the sentencing hearing, the trial court referred to a page of the probation report that unambiguously recommended that Sawyers pay "a restitution fine pursuant to [Penal Code section] 1202.4[, subdivision] (b) in the amount of \$6,400," and that Sawyers pay "an additional restitution fine pursuant to [Penal Code section] 1202.45 in the amount of \$6,400 to be stayed and remain so unless defendant's parole is revoked."

As the People note, Sawyers was provided a copy of the probation report prior to sentencing.

⁴ Section 1170, subdivision (b) states in relevant part, "The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law."

that a trial court must state its reasons and may not satisfy this requirement by incorporating portions of the probation report, "superior courts are *not* required to state formal reasons on the record for imposing restitution fines mandated by . . . section 1202.4." (*People v. Romero* (1985) 167 Cal.App.3d 1148, 1156, italics added; see also *People v. Reyes* (1987) 195 Cal.App.3d 957, 966; *People v. Gray* (1986) 187 Cal.App.3d 213, 222.) Further, since section 1202.45 requires that a trial court "assess an additional parole revocation restitution fine *in the same amount* as that imposed pursuant to subdivision (b) of Section 1202.4" (italics added), it follows that a trial court is not required to state its reasons on the record for imposing a parole revocation fine under section 1202.45.

In any event, even if a trial court's imposition of restitution fines under sections 1202.4 and 1202.45 were analogous to a court's decision to impose a term of imprisonment under section 1170, subdivision (b), it is also well established that a defendant's failure to object at sentencing to an improper statement of reasons forfeits any claim on appeal "involving the trial court's failure to properly make or articulate its discretionary sentencing choices.'" (*People v. Tillman* (2000) 22 Cal.4th 300, 302, quoting *People v. Scott* (1994) 9 Cal.4th 331, 353 (*Scott*).) Among the rationales for the *Scott* forfeiture rule is that "[r]outine defects in the court's statement of reasons are easily prevented and corrected if called to the court's attention." (*Scott, supra*, at p. 353.)

Sawyers raised no objection at the sentencing hearing to the trial court's statement that it was imposing the fines outlined at page 15 of the probation report. If Sawyers had

raised an objection, the court could have clarified any alleged ambiguity⁵ with respect to its imposition of fines at the sentencing hearing and could have corrected any alleged defect. Under these circumstances, the rationale for the *Scott* forfeiture rule fully applies. Accordingly, we conclude that Sawyers forfeited his claim that the court erred in incorporating by reference the restitution fines set out in the probation report.

Finally, we reject Sawyers's contention that he may raise this claim despite his failure to object in the trial court, under the theory that the restitution fines referenced in the abstract of judgment constitute unauthorized sentences under the reasoning of *Zackery, supra*, 147 Cal.App.4th 380. In *Zackery, supra*, at page 387, "[T]he trial court clerk unlawfully included in the minutes of defendant's sentencing various matters, including a number of fines, that were never orally imposed by the trial judge in the presence of [the] defendant." (Italics added.) In this case, the *trial court* imposed the restitution fine by incorporating the relevant portion of the probation report. Sawyers forfeited any error in the manner by which the court "articulated" its decision to impose the fines (*People v. Tillman, supra*, 22 Cal.4th at p. 302) by failing to raise an objection to such incorporation in the trial court.

⁵ Sawyers has not identified any *actual* ambiguity. In our view, the trial court's remarks unambiguously reflect the imposition of the two \$6,400 restitution fines.

IV.
DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

O'ROURKE, Acting P. J.

IRION, J.