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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DOMINIQUE TERRELL SHEROW,

Defendant and Appellant.

D062184

(Super. Ct. No. RIF138991)

APPEAL from a judgment of the Superior Court of Riverside County, Craig G. Riemer, Judge. Affirmed as modified; remanded with directions.

A jury convicted Dominique Terrell Sherow of 13 counts of burglary (Pen. Code, § 459) and 13 counts of receiving stolen property (§ 496, subd. (a)). In bifurcated proceedings, he admitted a prior conviction for selling or transporting controlled substances (Health & Saf. Code, § 11352). In May 2012, the court sentenced him to eight years in prison and imposed various fees, including \$780 under Government Code section 70373.

We affirm the judgment and remand with directions to modify the sentencing order and amend the abstract of judgment.

#### FACTUAL BACKGROUND

Riverside Police Detective Charles Payne testified that in August 2007, he conducted surveillance on Timothy Sherow Sr., Dominique Sherow's father<sup>1</sup>. Timothy left a department store in Orange County, and drove to department stores in the city of Corona. Simultaneously, police surveilled Dominique in the city of Riverside, and observed him answer his cell phone and drive quickly to AAA Jewelry & Loan pawn shop, where Timothy and Dominique met, talked briefly, and Timothy handed Dominique a large box full of DVD boxed sets. Dominique took the DVDs inside the pawn shop, while Timothy waited in the parking lot. After a while, both met again in the parking lot, spoke briefly, and Dominique gave Timothy money, which they divided before departing in their respective vehicles. A ticket from the pawn shop that day identified Dominique as the seller of 259 videos for \$518. Dominique declared on the ticket that he had received the videos as gifts.

Detective Payne saw surveillance video obtained from the department stores where Timothy had been that day. Timothy was seen shoplifting handfuls of DVDs and stuffing them in his pants. Personnel from the department stores where Timothy had shoplifted went to the pawn shop and identified as their property some brand new DVDs. When police arrested Timothy, he had wire cutters and aluminum foil in his vehicle.

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<sup>1</sup> We refer to Timothy and Dominique Sherow by their first names to avoid confusion.

Detective Payne testified wire cutters are used to remove security sensors from merchandise, and the aluminum foil is used to disable their security tags.

In October 2007, police arrested Lorina Amie, who has children with Timothy and was Dominique's codefendant at trial. Police asked her what she knew about Timothy's arrest, and she assumed it was for stealing, "[b]ecause all he does is steal." Amie said she had previously sold DVDs for Timothy at a pawn shop, and he had shared those sales proceeds with her.

### DISCUSSION

Appointed counsel has filed a brief summarizing the facts and proceedings in the trial court. Counsel presents no argument for reversal but asks that this court review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to possible but not arguable issues of whether: (1) sufficient evidence supports the conviction, particularly that Dominique knew the DVDs were stolen; and (2) whether his trial attorney provided ineffective assistance. Defense counsel also requests the sentencing order be modified and the abstract of judgment be amended.

We granted Dominique permission to file a brief on his own behalf. He has not responded. Based on our review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues referred to by appellate counsel, we remand and direct the trial court to modify the sentencing order and amend the abstract of judgment. Competent counsel has represented Dominique on this appeal.

The abstract of judgment reflects that the court imposed a criminal conviction assessment fee of \$7,800 under Government Code section 70373, and a \$1,600 fine under Penal Code section 1202.45. However, the reporter's transcript states the actual fee imposed was \$780, or \$30 for each of the 26 counts; further, the court struck the section 1202.45 fine. Finally, although the court stated at sentencing that Dominique would serve his time in custody in a local county jail, and not state prison, defense counsel stated that as of September 27, 2012, Dominique was in state prison. Accordingly, Dominique should be incarcerated in a local county jail under section 1170, subdivision (h)(2). The sentencing order shall be modified and the abstract of judgment shall be amended to accurately reflect the court's orders.

## DISPOSITION

We remand for the trial court to modify the sentencing order and amend the abstract of judgment to reflect that the correct fine under Government Code section 70373 is \$780; the \$1,600 fine under Penal Code section 1202.45 is stricken; and Dominique Terrell Sherow's sentence is to be served in local county jail under Penal Code section 1170, subdivision (h)(2). The court is directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

BENKE, Acting P. J.

NARES, J.