

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MONICA BARBOSA,

Defendant and Appellant.

E053444

(Super.Ct.No. RIF1102059)

OPINION

APPEAL from the Superior Court of Riverside County. Elaine M. Johnson,  
Judge. Affirmed as modified.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Kevin Vienna, Deputy Attorney  
General, for Plaintiff and Respondent.

## INTRODUCTION

Defendant Monica Barbosa seeks relief from three fines imposed by the trial court: a booking fee, a drug program fee, and a probation supervision fee, claiming that the court improperly imposed the fees without first determining her ability to pay them. We will remand the matter to the trial court for a hearing regarding defendant's ability to pay the disputed fees, but will otherwise affirm the judgment.

## FACTS AND PROCEDURAL HISTORY

On April 26, 2011, defendant pled guilty to one felony count of possession of methamphetamine for sale (Health & Saf. Code § 11372.7), and one misdemeanor count of driving with a suspended license (Veh. Code, § 14601.1, subd. (a)). Pursuant to the plea agreement, she was placed on probation for 36 months, and five additional cases against her were dismissed.<sup>1</sup> Terms of probation included a requirement that she be committed to the custody of the Riverside County Sheriff for 180 days, with the "Time imposed to be done through MFI."<sup>2</sup> The terms also included, among various fees and costs: a \$414.45 criminal justice administration or "booking" fee (Gov. Code § 29550); a \$190 drug program fee (Health & Saf. Code § 11372.7); and probation supervision costs

---

<sup>1</sup> Because of the plea bargain and immediate sentencing request, there is no information in the record about the substance of these cases.

<sup>2</sup> MFI appears to be "My Family, Inc.," a local drug rehabilitation program: <http://www.mfirecovery.com/>

of between \$591.12 and \$3740, depending upon the level of supervision required.<sup>3</sup> (Pen. Code § 1203.1b.) The plea agreement was signed by defendant, by the deputy district attorney, and by defense counsel.

In taking the plea, the court asked defendant if she had reviewed each item she had initialed on the felony and misdemeanor plea forms with her attorney, if she understood and agreed to each item, and if she had any questions. Defendant confirmed that she had reviewed and understood the plea forms and had no questions for her attorney or for the court. Defense counsel said that his client wished to accept the grant of probation, but objected to “the booking fee under Government Code section 29550.2, subdivision (a), the drug program fees pursuant to Health and Safety Code section 11372.7, and the reimbursement [of the] costs of probation under Penal Code section 1203.1 (b), as she has no ability to pay. [¶] We’d further request that the remaining fines and fees, that they be stayed until she completes the six months at MFI because it’s a residential program.”

To the court’s query regarding why defendant had no ability to pay, counsel answered that his client had been unemployed for three years and that her only income was from housecleaning for the person with whom she had been living. Prior to that, she had worked at Wal-Mart. After listening to these assertions, the court replied, “Well, we’ll note the objection. I will refer it to enhanced collections for her ability to pay, all right?” Although all are recorded in the clerk’s transcript as “terms and conditions of

---

<sup>3</sup> The exact amount of the probation supervision fee to be levied, within the stated range, was to be determined by the Probation Department.

probation,” the court did not orally recite any of the fees or costs to which defense counsel objected.<sup>4</sup>

After granting probation, the court ordered defendant to report to the MFI residential drug treatment program “tomorrow morning,” and to probation “within two business days of your release . . . . [¶] You must also report to enhanced collections to be interviewed regarding your ability to pay, set up any payment plan for your fines and fees.” The court did not advise defendant that, if she disagreed with the recommendation of enhanced collections, she was entitled to a hearing regarding her ability to pay the fees and costs imposed as a condition of probation. Defense counsel made no further objection and did not request a hearing.

## **DISCUSSION**

### *Booking and Drug Program Fees and Probation Supervision Costs*

Defendant asserts, and we agree, that in her case each of the code sections under which the disputed fees and costs were imposed requires the trial court to determine her ability to pay them. Booking fees, while mandatory, are subject to a determination of the defendant’s ability to pay whenever the defendant is granted probation. (Gov. Code §§ 29550, subds. (c) & (d)(2) and 29550.2, subd. (a).)<sup>5</sup> Similarly, a court referring a

---

<sup>4</sup> However, the court imposed three others fees in another of defendant’s cases: a \$200 restitution fine (Pen. Code § 1202.4, subd. (b)); a \$30 conviction fee (Gov. Code § 70373); and a \$40 court security fee (Pen. Code § 1465.8). In that case, defendant was also sentenced to the 25 days she had already been in custody.

<sup>5</sup> Defendant assumes the booking fee assessed in her case was pursuant to Government Code section 29550.2, while the Clerk’s Transcript indicates that the fine  
*[footnote continued on next page]*

defendant to a drug treatment program is required to determine whether the person can pay the program fee. If the court determines that the person does not have the ability to pay the fee, the person will not be required to do so. (Health & Saf. Code § 11372.7, subd. (b).) Finally, in any case where a defendant is granted probation, the probation officer determines probation-related costs and the defendant's ability to pay them but, in addition, is required to "inform the defendant that the defendant is entitled to a hearing . . . in which *the court* shall make a determination of the defendant's ability to pay . . . ." (Pen. Code § 1203.1b, subds. (a), (b)(1), (b)(2), & (f), italics added.) If the defendant requests a hearing, the court determines the defendant's ability to pay based on a variety of factors, including present and future financial position and the likelihood of future employment. (Pen. Code § 1203.1b, subd. (e)(1-4).)

Relying largely upon *People v. Pacheco* (2010) 187 Cal.App.4th 1392 (*Pacheco*), defendant argues that because the court did not make an ability to pay determination at sentencing, all of the orders regarding the disputed fees must be reversed. The People respond that defendant forfeited her claim "by requesting immediate sentencing" and thereby "waiving the preparation of a probation report which would have provided information to assist the trial court's ability-to-pay determination." They believe the judgment should simply be affirmed.

---

[footnote continued from previous page]

was imposed pursuant to Government Code section 29550. Because she was not sent to prison but received a grant of probation, the discrepancy is irrelevant.

As a threshold matter, it is clear that defendant did not waive or forfeit her claim that she was unable to pay the disputed fees; her attorney's objections were acknowledged and noted by the court. Since defendant was already in custody in jail and was to be transferred to the drug treatment program the following morning, she cannot be penalized for requesting immediate sentencing.

In *Pacheco*, the trial court imposed a variety of fees as conditions of probation—attorney's fees, booking fees, probation supervision fees, and court security fees—all of which were statutorily conditioned on the defendant's ability to pay them. The court made no assessment of the defendant's ability to pay any of the fees, two of which (attorney's fees and probation supervision costs) could not legally have been imposed as conditions of probation. (*Pacheco, supra*, 187 Cal.App.4th at pp. 1396-1399, 1401-1402.) The court had referred the matter to the Santa Clara County Department of Revenue for a determination of the defendant's ability to pay attorney's fees, but had not conditioned imposition of the fees on the outcome of that determination. (*Id.* at pp. 1396, 1398.) The referral, the appellate court said, "shed[] no light on the issue" of the defendant's ability to pay. (*Id.* at p. 1398.) While a county officer may inquire into a defendant's ability to pay, it is the court that must make the ultimate determination and a referral alone does not fulfill this requirement. (*Id.* at pp. 1398-1399.) The appellate court further found that attorney's fees, probation supervision fees, and court security fees could not be imposed as conditions of probation and required separate orders. (*Id.* at pp. 1403-1404.)

The circumstances here are almost identical to those in *Pacheco*. The trial court imposed the disputed fees and costs as conditions of probation without making the required findings of defendant's ability to pay and without making appropriate arrangements for a follow-up hearing. Nor did the court inform the defendant that she had a right to dispute the findings of enhanced collections at a hearing before the court where she could present evidence to support her assertion that she could not pay.

We emphasize that the court was not required to accept defendant's or defense counsel's mere assertions that she was unable to pay. It reasonably expressed doubt and made an appropriate referral. At enhanced collections, the court explained, defendant would be "interviewed regarding your ability to pay, set up any payment plan for your fines and fees." From the opinion in *Pacheco*, it is impossible to determine the nature of the Santa Clara County Department of Revenue or its relationship to the trial courts in that jurisdiction. Here, however, the "enhanced collections" (ECD) to which our trial court referred defendant for an interview regarding her financial status is a part of the Superior Court, not a separate county entity or agency.<sup>6</sup> It thus fits the description of "an

---

<sup>6</sup> The ECD can be reached via a link within the "Info by Division" section on the Superior Court's home page (<http://www.riverside.courts.ca.gov/>) or at its own separate web address at (<http://www.riverside.courts.ca.gov/ecd/walkinnotice.pdf>). The entity is titled the "Superior Court of California County of Riverside Enhanced Collections Division (ECD)" and is situated in-house at various Superior Court locations in the County of Riverside. In this particular case, the Superior Court and the related Enhanced Collections Division are located at 4100 Main St., Riverside, CA. 92501. (<http://www.riverside.court.ca.giv/ecd/walkinnotice.pdf>) The website explains that defendants for whom fees or fines have been ordered "will be required to complete a Financial Affidavit" or "verification form" on which all income and expenses must be listed. The website also explains that "payment arrangements are based on your ability to

*[footnote continued on next page]*

officer designated by the court to make an inquiry into the ability of the defendant to pay.” (*Pacheco, supra*, 187 Cal.App.4th at p. 1398.)

In sum, although it appears that the ECD is an appropriate vehicle for the collection of evidence regarding the defendant’s ability to pay the various fees and costs to which she is subject as a result of her convictions, it is still the duty of the court, not an interviewer at an administrative subdivision, to make the ultimate determination. (*Pacheco, supra*, 187 Cal.App.4th at p. 1398.) The court here should have advised defendant of her right to a hearing if she disagreed with ECD’s recommendations or should have scheduled a follow-up hearing to consider any evidence on the issue.<sup>7</sup> In the interests of justice and judicial economy, we will not simply strike the disputed fees, but will vacate the orders imposing them and remand the matter to the trial court with instructions to conduct a hearing to determine defendant’s ability to pay.

---

*[footnote continued from previous page]*

pay fines or fees” and informs the defendant that the “ECD will make inquiries to credit bureaus to assist in determining your ability to pay.” However, the website does not say what will happen if it determines that the defendant does not have an ability to pay the fines and fees, and does not inform defendants of their right to a court determination.

<sup>7</sup> A review of our records reveals that these issues—failure to determine a person’s ability to pay before imposing various fees, fines, and costs and improper imposition of some of these items as conditions of probation—have been the subject of numerous cases in our court in recent years. The issue is consuming considerable time and resources at both the trial and appellate levels and appears to be one that perhaps could be resolved by a standardization of procedures in the trial court.

## DISPOSITION

The trial court's judgment of conviction is affirmed, but the orders for payment of a booking fee, a drug program fee, and probation supervision costs are vacated. The matter is remanded with instructions for the court to determine defendant's ability to pay all or a portion of these fees and costs in accordance with the provisions of the relevant statutes. If on remand the court determines that defendant has the ability to pay these fees and costs, they are to be imposed as separate orders, not as conditions of probation.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

HOLLENHORST  
Acting P.J.

RICHLI  
J.