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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

BRANDON JAY ACUFF,

Defendant and Respondent.

E054983

(Super.Ct.No. RIF150369)

OPINION

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

Paul E. Zellerbach, District Attorney, and Matt Reilly, Deputy District Attorney,
for Plaintiff and Appellant.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and
Respondent.

INTRODUCTION

The People appeal the trial court's order suspending a \$200 restitution fine
imposed on defendant Brandon Jay Acuff (defendant). We will affirm.

FACTS AND PROCEDURAL HISTORY

On June 3, 2009, defendant pled guilty to one felony count of possession of methamphetamine (Health & Saf. Code § 11377, subd. (a)), and admitted four prison priors (Pen. Code § 667.5, subd. (b).)¹ The trial court sentenced him to four years in state prison, suspended, and granted him three years of formal probation with a referral to drug court. One of the terms of probation was that defendant pay a \$200 restitution fine. Another was that he successfully complete the Drug Court Recovery Opportunity Center (ROC) program.

Defendant enrolled in the ROC program by signing a “contract” that imposed detailed conditions of participation, court appearances and drug tests. The contract covered four 90-day periods of treatment to be followed by six months in “aftercare.” If he failed to complete the program, he could be sent to prison for four years. The contract also specified that, if he completed the program successfully, his attorney could file a section 1203.4 motion to replace his guilty plea with a not-guilty plea, and if the motion was granted, the charges against him could possibly be reduced or dismissed.

On September 14, 2011, defendant was one of six graduates found by the trial court to have successfully completed the ROC program.² After congratulating defendant on his achievement, on motion of defense counsel pursuant to section 1203.4, the court

¹ All further statutory references are to the Penal Code.

² Defendant’s case appears to be the fourth of the six in which the People appealed the dismissal of the restitution fines. The three others are E054999, E055029, and E054977. In each of those cases, of which we hereby take sua sponte judicial notice, we affirmed the trial court’s order dismissing the restitution fine.

set aside defendant's conviction, terminated his probation, and suspended all his remaining fines and fees. The prosecutor objected to the suspension of the fines and fees: "If I could just say as to all the ROC people, the People are opposing the fines and fees being suspended."

DISCUSSION

The People argue that the court erred by dismissing the restitution fine when defendant successfully completed probation because "a restitution fine survives the probationary term." Defendant answers that the court acted within its discretion in suspending the unpaid fines and fees, including the restitution fine. We agree with defendant.

Imposition of the Restitution fine

The People are correct that the imposition of a restitution fine at the time of a criminal conviction is mandatory (§ 1202.4, subd. (b)). The People are also correct that a restitution fine may be enforceable as a civil judgment following completion of probation. (§ 1214.2, subs. (a) & (b)(2).) Here, the court appropriately imposed the restitution fine as a condition of probation at the time defendant entered his guilty plea.

The Effect of Section 1203.4

The People are not correct, however, in arguing that a trial court commits error when it dismisses a restitution fine when probation is terminated early, the guilty plea withdrawn and replaced with a not-guilty plea, and the case is dismissed. Judicial power to grant a motion for these actions is conferred by another statute, section 1203.4.

Section 1203.4 provides, in pertinent part: “In any case in which a defendant . . . has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant *shall*, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty . . . and enter a plea of not guilty . . . and . . . the court *shall* thereupon dismiss the accusations or information against the defendant and . . . he or she *shall* thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted” (§ 1203.4, subd. (a), italics added.)

Defendant’s case fits exactly into this provision. The trial court clearly determined, in its discretion and in the interests of justice in light of his performance in the ROC program, that defendant’s motion to withdraw his guilty plea and terminate probation should be granted. The record does not show that he was serving a sentence for any other offense, was on probation for any other offense, or had been charged with any other offense. Accordingly, once it had decided to terminate probation early and permit him to withdraw his guilty plea, the court was authorized (if not required) to release him from all the “penalties and disabilities resulting from the offense of which [he] had been convicted.” The restitution fine was such a penalty/disability and the decision to dismiss it was not error.

For support, the People rely on a number of cases where, after probation was revoked and a defendant returned to prison, appellate courts held that the restitution fine—and in one case a victim restitution order—survived the revocation of probation. (*People v Chambers* (1998) 65 Cal.App.4th 819, 822; *People v. Arata* (2004) 118 Cal.App.4th 195, 201; *People v. Urke* (2011) 197 Cal.App.4th 766, 779; *People v. Kleinman* (2004) 123 Cal.App.4th 1476, 1481.) This is not such a case. Defendant’s probation was not revoked. It was terminated early and his case dismissed because of his successful completion of the ROC program.³ He was therefore entitled to make the motion for dismissal and the court was entitled to grant it.

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.

³ We note also that defendant was not relieved of a *victim restitution order* (§ 1202.4, subs. (a)(1), (a)(3)(B) & (f)), but of a *restitution fine* (§ 1202.4, subd. (b).)