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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RENE COSTILLA,

Defendant and Appellant.

E055940

(Super.Ct.No. FVI1102736)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. Affirmed with directions.

David R. Greifinger, 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, William M. Wood and Marilyn L. George, Deputy Attorneys General, for Plaintiff and Respondent.

BACKGROUND¹

Defendant was charged with possessing a controlled substance, to wit, methamphetamine, for the purpose of sale on December 1, 2011. (Health & Saf. Code, § 11378.)² She entered a plea of no contest to this charge pursuant to a plea agreement. The trial court sentenced her according to this agreement to the mitigated term of 16 months with 200 days of credit, 100 actual and 100 conduct credits. However, both the minute order and the order of commitment incorrectly reflect that defendant was to receive half-time credit under Penal Code section 4019.

In addition, the court imposed the following fines and fees: \$240 restitution fine; \$50 laboratory analysis fee pursuant to Health and Safety Code section 11372.5, subdivision (a), but the minute order reflects the amount of this fine as \$150; a \$10 drug program fee pursuant to Health and Safety Code section 11372.7, while the minute order reflects a fee of \$50. Finally, the minute order indicates that the court imposed a \$240 parole revocation fee pursuant to Penal Code section 1202.45, although the reporter's transcript contains no mention of the trial court imposing such a fine.

¹ In light of defendant's plea and the issues she now raises, the circumstances of the offense need not be set out.

² Statutory references are to the Health and Safety Code unless otherwise stated.

DISCUSSION

Defendant contends the minute order and order of commitment contain erroneous entries, which this court must order corrected. We will discuss her claims item by item.

1. Restitution Fine.

When defendant committed her offense in 2011, the minimum restitution fine under Penal Code section 1202.4, subdivision (b), was \$200. This statute was amended effective January 1, 2012, and the minimum fine was increased.

Defendant asserts that it is evident that the trial court intended to impose the minimum fine, but mistakenly used the amount in effect in 2012 rather than in 2011. She contends that this court must reduce the amount to \$200 to reflect the statutory minimum in effect at the time of the offense.

The People disagree that the imposition of a \$240 fine is an ex post facto violation because the trial court had the discretion to impose a restitution fine ranging from \$200 to \$10,000 in 2011, and the \$240 fine is well within that range. We agree. While the prohibition against ex post facto laws applies to restitution fines (*People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1248), the trial court could have imposed a \$240 restitution fine in 2011. Thus, it was not an unauthorized sentence, which is a sentence that could not lawfully be imposed under any circumstances in the particular case. (*People v. Garcia* (2010) 185 Cal.App.4th 1203, 1218.)

Defendant asserts that we must infer that the trial court actually intended to impose the minimum fine. The People counter that this is mere speculation. It does appear that the trial court believed that the minimum fine it could impose was \$240 because it had earlier advised defendant that she would be required to pay a restitution fine of not less than \$240, nor greater than \$10,000. However, it is still somewhat speculative that it would have imposed a lesser fine even if believed that it could have done so.

More importantly, defendant raised no objection in the trial court to the amount of the fine. As we have indicated, the \$240 fine was not an unauthorized sentence so defendant forfeited her objection to the amount by failing to raise the issue in the trial court. (*People v. Garcia, supra*, 185 Cal.App.4th at p. 1218.)

2. *Conduct Credits.*

Defendant had served 100 days in county jail at the time of her sentencing. Penal Code section 4019 provides for one-for-one custody conduct credits for time served in county jail prior to sentencing for crimes committed after October 1, 2011. In its oral statement, the trial court awarded defendant 100 days credit for actual time served plus 100 days of conduct credit, but neither the minute order nor the order of commitment reflect the award of 100 days conduct credit.

The People concede that these documents are not accurate and that the trial court should be directed to amend them to reflect 100 days of conduct credit.

3. Criminal Laboratory Analysis Fee.

Section 11372.5 requires that a \$50 laboratory analysis fee be assessed for each offense under, inter alia, section 11378. The trial court ordered defendant to pay this \$50 fee, but the minute order reflects the amount of the fee as \$150. The People agree that the minute order should be amended to reflect the amount of the fee as \$50.

4. Drug Program Fee.

The reporter's transcript indicates that the sentencing court ordered defendant to pay a \$10 drug program fee pursuant to section 11372.7, but the minute order erroneously records the fee imposed as \$50. The People agree that the minute order should be amended to reflect the amount of the fee that the trial court actually imposed.

5. Parole Revocation Fee.

The minute order indicates that the court imposed a \$240 parole revocation fine pursuant to Penal Code section 1202.45, although the trial court never expressly imposed such a fine according to the reporter's transcript. Moreover, defendant is serving her sentence in county jail pursuant to Penal Code section 1170, subdivision (h)(1), and, as a result, she will not be placed on parole upon her release, but will be supervised by country probation officers. As conceded by the People, imposition of the \$240 parole revocation fine must be ordered stricken from the minute order.

DISPOSITION

The superior court clerk is directed to correct the minute order of March 9, 2012, and the order of commitment: (1) to award 200 days presentence custody credits, 100 actual days and 100 days under Penal Code section 4019; (2) to reflect a \$50 fee under Health and Safety Code section 11372.5; (3) to reflect a \$10 fee under Health and Safety Code section 11372.7; and (4) to strike the parole revocation fine. The judgment is affirmed in all other respects.

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KING
_____ J.

We concur:

RAMIREZ
_____ P. J.

MILLER
_____ J.