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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.

FREDERICK DOUGLAS BENNETT,

Defendant and Appellant.

E057796

(Super.Ct.No. FWV1202174)

OPINION

APPEAL from the Superior Court of San Bernardino County. Stephan G. Saleson, Judge. Affirmed as modified.

John F. Schuck, 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, Melissa Mandel and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Frederick Douglas Bennett pled guilty to possession of a weapon in a penal institution (Pen. Code, § 4502, subd. (a)),

and admitted that he had suffered one prior prison term (Pen. Code, § 667.5, subd. (b)).¹ In return, the remaining allegations were dismissed and defendant was sentenced to the agreed-upon term of six months in county jail with credit for time served, plus four years six months of mandatory supervision with various terms and conditions. Defendant's sole contention on appeal is that the parole revocation fine ordered pursuant to section 1202.45 must be stricken because he was not subject to parole. The People agree. We also agree and will order the parole revocation restitution fine stricken.

I

DISCUSSION²

The trial court imposed various fines and fees, including a \$240 parole revocation restitution fine under section 1202.45, which was to be “stayed pending successful completion of Mandatory Supervision.” At the time of defendant's sentencing on December 17, 2012, section 1202.45 provided for a mandatory parole revocation fine in an amount equal to the restitution fine in every case where a prison term includes a period of parole.³ (Stats. 2007, ch. 302, § 15; *People v. Tillman* (2000) 22 Cal.4th 300, 302.)

¹ All future statutory references are to the Penal Code unless otherwise stated.

² Because the details of the factual background are not relevant to the limited legal issue raised on appeal, we will not recount them.

³ Former section 1202.45 specifically provided that “[i]n every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. This additional parole revocation

[footnote continued on next page]

“A sentence resulting in imprisonment in the state prison pursuant to Section 1168 or 1170 shall include a period of parole supervision or postrelease community supervision, unless waived, or as otherwise provided in this article.” (§ 3000, subd. (a)(1).)

In sentencing a defendant to county jail under section 1170, subdivision (h)(5)(B)(i), a trial court “can impose a hybrid sentence in which it suspends execution ‘of a concluding portion of the term’ and sets terms and conditions for mandatory supervision by the county probation officer. [Citation.]” (*People v. Cruz* (2012) 207 Cal.App.4th 664, 671.) “Additionally, a defendant sentenced under section 1170, subdivision (h)—whether to a straight jail term or to a hybrid term—is not subject to a state parole period after his or her sentence is completed. (§ 3000, subd. (a)(1) [parole included in sentence resulting in imprisonment in the state prison].)” (*Id.* at pp. 671-672.)

Here, defendant’s sentence was to be served in county jail pursuant to section 1170, subdivision (h). Since parole is not included in sentences imposed under this statutory scheme (§ 3000, subd. (a)(1)), the parole revocation fine did not apply. Section 1202.45 was amended to provide for a mandatory supervision restitution fine (§ 1202.45, subd. (b), as amended by Stats. 2012, ch. 762, § 1.); however, that provision did not become effective until January 1, 2013. (Cal. Const., art. IV, § 8, subd. (c) [absent urgency legislation, statutory amendments enacted at regular session become effective January 1 next following 90-day period from the date of enactment].) Accordingly, we

[footnote continued from previous page]

restitution fine shall not be subject to penalty assessments . . . and shall be suspended unless the person’s parole is revoked.”

strike the \$240 mandatory supervision restitution fine. (*People v. Smith* (2001) 24 Cal.4th 849, 852-854 [unauthorized sentence may be corrected at any time].)

II

DISPOSITION

The judgment is modified to strike the \$240 parole revocation supervision restitution fine imposed under former section 1202.45. As modified, the judgment is affirmed. The trial court is directed to prepare an amended sentencing minute order reflecting this modification and to forward a certified copy thereof to the appropriate authorities.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.