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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL PHILLIP COMPIAN,

Defendant and Appellant.

F061033

(Super. Ct. Nos. MF50324, MF47726A &  
MF49092)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Frank Dougherty, Judge.

Deborah Prucha, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Paul A. Bernardino, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Kane, J., and Detjen, J.

In 2008, in Merced County Superior Court case No. MF49092 (case No. MF49092) appellant, Daniel Phillip Compian, pled guilty to possession of methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a) (section 11377(a)). The court placed appellant on three years' Proposition 36 drug-treatment probation, i.e., probation under the Substance Abuse and Crime Prevention Act of 2000 (Pen. Code, § 1210 et seq.), with various terms and conditions, including that appellant pay a restitution fine of \$200.

In 2009, in Merced County Superior Court case No. MF50324 (case No. MF50324) appellant pled guilty to a second charge of violating section 11377(a), and admitted violating probation in two other cases: case No. MF49092 and Merced County Superior Court case No. MF47726A (case No. MF47726A), another 2008 case, in which appellant stands convicted of carrying a concealed weapon in a vehicle (Pen. Code, § 12025, subd. (a)). The court imposed a sentence of three years four months covering all three cases, suspended execution of sentence, again placed appellant on probation, and, in case No. MF50324, imposed as a condition of probation a \$200 restitution fine.

In 2010, appellant admitted allegations he committed noncriminal violations of probation in all three cases. The court imposed the previously suspended prison term of three years four months and, in each of the three cases, imposed a restitution fine of \$300.

Appellant argues that the court erred in imposing \$300 restitution fines in each of case Nos. MF49092 and MF50324 because the court had previously imposed restitution fines in those cases.<sup>1</sup> Respondent concedes, and we agree. We modify the judgment accordingly.

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<sup>1</sup> The court did not impose a restitution fine in case No. MF47726A when appellant was placed on probation in that case in 2008.

## **DISCUSSION**

A restitution fine (Pen. Code, § 1202.4) imposed at the time of conviction and granting of probation remains in effect if probation is subsequently revoked. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 823 (*Chambers*); *People v. Downey* (2000) 82 Cal.App.4th 899, 921 (*Downey*)). A second restitution fine imposed following revocation is statutorily unauthorized. (*Chambers*, at p. 823; *Downey*, at p. 921.) Accordingly, in the instant case, the restitution fines imposed in case Nos. MF49092 and MF50324 in 2008 and 2009, respectively, remain in effect, and we will strike the \$300 restitution fines imposed in each of those cases in 2010.

## **DISPOSITION**

The judgment is modified as follows: The \$300 restitution fines imposed in case Nos. MF49092 and MF50324 are stricken. As modified, the judgment is affirmed.

The trial court is directed to amend the abstract of judgment to reflect this modification and to forward the amended abstract to the California Department of Corrections and Rehabilitation.