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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR DANIEL MARTINEZ,

Defendant and Appellant.

F061718

(Super. Ct. No. F10902436)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. W. Kent Hamlin, Judge.

Tracy A. Rogers, 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, Julie A. Hokans and Robert Gezi, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Victor Daniel Martinez was charged with attempted receiving stolen property (Pen. Code,¹ §§ 496, subd. (a), 664; counts 1 & 2) and possession of a firearm by a felon (former § 12021, subd. (a)(1)²; count 3). Following a jury trial, he was acquitted of counts 1 and 2, but convicted of count 3. Imposition of sentence was suspended and defendant was placed on probation for three years on various terms and conditions. On appeal, he challenges orders that he pay attorney fees and probation fees and costs, and imposition of alcohol-related probation conditions. We affirm the conviction, but order correction of the sentencing minute order and remand the matter for further proceedings.

FACTS³

On November 1, 2008, a search warrant was executed at defendant's residence in connection with an auto theft/chop shop investigation. A nine-millimeter handgun was found in a box in the master bedroom closet. The gun, which records showed was purchased in 1999, was registered to defendant.

Defendant subsequently was advised of, and waived, his rights. He admitted he was a convicted felon, but initially denied possessing any guns other than a BB gun. Advised that a gun had been found in his residence, he admitted it was his. He said he lied about it because he did not know if he was allowed to have it.

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

² Effective January 1, 2012, former section 12021, subdivision (a)(1) was repealed and reenacted as section 29800, subdivision (a)(1) without substantive change. (Stats. 2010, ch. 711, § 4, p. 4036 [repealed]; Stats. 2010, ch. 711, § 6, p. 4169 [reenacted].)

³ We summarize only the facts pertinent to count 3.

DISCUSSION

A. Background

The probation officer's report (report) related that defendant, age 35, was married and resided with his wife and five minor children. He had an 11th-grade education, was employed by a landscaping company, and had a current net income of \$300 a week, plus \$150 a month from a second job. He paid \$451 in monthly child support. Defendant reported consuming alcohol since he was 32, and stated that he drank one case of beer on occasion. He denied having an alcohol problem or using illegal narcotics.

The report revealed that in 1992, as a juvenile, defendant was placed on probation, with time spent in juvenile hall, following felony charges of vehicle theft (Veh. Code, § 10851, subd. (a)) and evading a peace officer with wanton and willful disregard for safety of persons or property (*id.*, § 2800.2). In 2004, as an adult, defendant was placed on probation, with 180 days in jail, following a felony charge of attempted grand theft (§§ 487, subd. (a), 664), and he successfully completed probation.

For the current offense, the report recommended, in pertinent part, that defendant be placed on probation on condition that he serve time in jail, not use or possess any alcoholic beverages or visit any place where intoxicants were the chief item of sale, and pay a \$600 fine pursuant to section 1202.4. The report further recommended, as an order of the court but not a condition of probation, defendant pay fees for probation supervision (\$360), presentence report (\$296), treatment programs, and other probation costs pursuant to section 1203.1b, and pay attorney fees pursuant to section 987.8 as determined by the court.

At sentencing, the trial court suspended imposition of judgment for three years, and placed defendant on formal felony probation on condition, inter alia, that he serve 120 days in jail; not use alcohol or visit any place where alcohol was being consumed; submit to alcohol testing; and enroll, participate in, and successfully complete any alcohol abuse program as directed by the probation officer. Defense counsel objected to

the no-alcohol condition, arguing there was no basis for it since nothing suggested alcohol or narcotics had anything to do with this case, and that, while defendant might use alcohol, he did not abuse it. The court responded: “Your concerns are noted but given his description of his drinking pattern I think he probably has a drinking issues ... but I do think he is at risk of committing future crimes if he were to become inebriated and described drinking pattern in the report is.” (*Sic.*) The court noted it was not imposing an “obey all laws” condition, but believed the alcohol condition was supported by defendant’s description of his drinking history.

With respect to financial orders, the court imposed a \$200 fine pursuant to section 1202.4. It also ordered defendant to pay fees for probation supervision, the presentence report, treatment programs, and other probation costs pursuant to section 1203.1b. When it asked defense counsel if he were privately retained, counsel replied, “No, I’m not but I do have a financial form.” The court then told defendant, “I am going to order attorney’s fees notwithstanding your current financial situation but give you 2 years to pay it... [T]he trial did take several days. There were a number of previous appearances. And so I’m ordering \$1,000 in attorney’s fees as a reasonable fee for his compensation. [¶] I’m going to give you monthly payment schedule for that. \$35 per month. And that will begin first payment due June 1st, 2011, and by that date 35 by the 1st of June every month thereafter until those fees are paid in full.”

The January 11, 2011, sentencing minute order shows the court imposed a probation condition that defendant obey all laws, and that he “not use or possess alcoholic beverages and ... not be present in any establishment where the primary items for sale are alcoholic beverages.” The minute order also shows attorney fees in the amount of \$10,000 due by January 11, 2012.

B. Analysis

1. *Attorney Fees*

Defendant says the order that he pay attorney fees must be reversed because the trial court failed to provide notice and a hearing to determine defendant's present ability to pay. The People concede error, but argue the appropriate remedy is a remand for hearing. We agree with the People.⁴

“‘[P]roceedings to assess attorney’s fees against a criminal defendant involve the taking of property, and therefore require due process of law, including notice and a hearing.’ [Citations.]” (*People v. Phillips* (1994) 25 Cal.App.4th 62, 72.) To this end, section 987.8, subdivision (b) states that where, as here, counsel has been appointed for a defendant, “upon conclusion of the criminal proceedings in the trial court, ... the court may, *after notice and a hearing*, make a determination of the *present ability* of the defendant to pay all or a portion of the cost thereof.” (Italics added.)⁵

An ability-to-pay hearing may be held in conjunction with the sentencing hearing. (*People v. Phillips, supra*, 25 Cal.App.4th at p. 76; but see *People v. Bradus* (2007) 149 Cal.App.4th 636, 642, fn. 4.) Whether the hearing is held then or separately, however, section 987.8, subdivision (e) entitles the defendant at a minimum to the rights to be heard in person, to present witnesses and other documentary evidence, to confront and

⁴ In *People v. Viray* (2005) 134 Cal.App.4th 1186, 1215-1216, the Court of Appeal held that forfeiture of the issue for purposes of review could not be predicated on the failure of a trial attorney to challenge an order concerning his or her own fees. Based on this reasoning, the People further concede defendant's claim is properly before us despite his failure to object to the trial court's order at the time it was made.

⁵ Subdivision (f) of section 987.8 requires, generally speaking, that before appointing counsel, a court must give notice to the defendant that he or she may be required to pay all or a portion of the cost of counsel. Defendant does not now contend he was not notified of his potential liability at the time counsel was appointed.

cross-examine adverse witnesses, to have the evidence disclosed to him or her, and to a written statement of the court's findings.

Under subdivision (g)(2) of section 987.8, “[a]bility to pay’ means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of the legal assistance provided to him or her, and shall include, but not be limited to, all of the following: [¶] (A) The defendant’s present financial position. [¶] (B) The defendant’s reasonably discernible future financial position. In no event shall the court consider a period of more than six months from the date of the hearing for purposes of determining the defendant’s reasonably discernible future financial position.... [¶] (C) The likelihood that the defendant shall be able to obtain employment within a six-month period from the date of the hearing. [¶] (D) Any other factor or factors which may bear upon the defendant’s financial capability to reimburse the county for the costs of the legal assistance provided to the defendant.”

In assessing ability to pay, “the court [must] consider what resources the defendant has available and which of those resources can support the required payment,’ including both the defendant’s likely income and his or her assets. [Citations.]” (*People v. Polk* (2010) 190 Cal.App.4th 1183, 1206.) A trial court’s finding of present ability to pay need not be express, but may be implied “through the content and conduct of the hearings. [Citation.] But any finding of ability to pay must be supported by substantial evidence. [Citations.]” (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1398.)

In the present case, the report recommended that defendant be ordered to pay attorney fees, pursuant to section 987.8, “as determined by the court.” Such a recommendation arguably placed defendant on notice that he should be prepared to proceed with the ability-to-pay hearing at the time of sentencing. (See *People v. Phillips, supra*, 25 Cal.App.4th at pp. 74-75.) We need not resolve that question, however, since defendant clearly was deprived of the hearing that section 987.8, subdivision (b) and due process require before an order to pay attorney fees can be imposed. The trial court

simply made an order based on the incomplete financial information contained in the report and its own assessment of what constituted reasonable attorney fees.

The amount ordered must be based on a defendant's present ability to pay. (§ 987.8, subd. (b).) In determining a defendant's future financial position, the trial court is to look at no more than the six-month period following the date of the hearing. (Cf. *People v. Hoover* (2011) 199 Cal.App.4th 1470, 1473-1474.) Additionally, there must be evidence of the actual cost to the county of the services provided to a defendant. (*People v. Viray, supra*, 134 Cal.App.4th at p. 1217; *People v. Poindexter* (1989) 210 Cal.App.3d 803, 810-811.) Here, we cannot tell whether the financial form mentioned by defense counsel contained additional information about defendant's finances and assets, or some sort of itemization of time and costs expended by counsel on defendant's behalf. In any event, it does not appear from the record that the court considered it.

The question of the appropriate remedy remains. As noted, the People request a remand for the hearing required by section 987.8, subdivision (b). Defendant asks us to strike the order imposing attorney fees, because, he says, the trial court ordered payment of the fees despite implicitly finding an inability to pay, and no reasonable trier of fact could find an ability to pay given defendant's income and obligations.

We conclude a remand for notice and hearing, as approved in *People v. Flores* (2003) 30 Cal.4th 1059, 1062, 1068-1069, is appropriate. The record is simply too incomplete to allow us to make an accurate determination of defendant's ability to pay or the trial court's thinking in that regard. In his written statement to the court and probation officer, defendant represented that he owned property and cars. Thus, it is conceivable he has the means to reimburse the county for some amount. "Defendant may not be able to pay the [amount] ordered by the trial court, but he may be able to pay something, and if he can, he is obligated by the statute to do so." (*Id.* at pp. 1068-1069.) Of course, his expenses, fleshed out beyond what little is contained in the report, may overwhelm any ability to pay. "[R]ather than speculate about it, we ... remand ... so that

the trial court may, after having conducted a hearing into the question, make an informed decision.” (*Id.* at p. 1069.)

2. *Probation Fees and Costs*

Defendant says the order that he pay probation fees and costs must be reversed because the trial court failed to provide notice and a hearing to determine defendant’s present ability to pay, and the probation officer failed to comply with the statutory requirements of determining ability to pay and securing a knowing and intelligent waiver of the right to a judicial determination thereof. The People say defendant forfeited his claim of error by failing to object to the fees and costs in the trial court.

Appellate courts disagree about whether a challenge to an order to pay probation costs and fees is forfeited absent objection in the trial court. (See, e.g., *People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1069-1072, 1076 [failure to object to statutory error in imposition of probation fee under § 1203.1b forfeited matter for purpose of appeal]; *People v. Robinson* (2002) 104 Cal.App.4th 902, 904, fn. 2, 905-906 [failure to object did not forfeit claim § 1203.1b did not apply, but did forfeit claim trial court failed to find ability to pay or to follow statutory procedures]; *People v. Pacheco, supra*, 187 Cal.App.4th at p. 1397 [failure to object did not forfeit claim trial court failed to determine ability to pay; evidence was insufficient to support any such determination]; cf. *People v. Gamache* (2010) 48 Cal.4th 347, 409 [failure to object forfeited claim trial court did not adequately consider defendant’s ability to pay in imposing victim restitution fine].) Where, as here, the report recommends imposition of probation fees and costs, we feel those decisions finding forfeiture are the more persuasive. However, the matter must already be remanded for an ability-to-pay hearing under section 987.8. That being the case, a remand pursuant to section 1203.1b places little or no additional burden on the trial court and the public fisc. (Compare *People v. Valtakis, supra*, 105 Cal.App.4th at p. 1076.) We, therefore, choose to exercise our authority to reach defendant’s claim. (*People v. Williams* (1998) 17 Cal.4th 148, 161-162, fn. 6.)

Section 1203.1b, subdivision (a) provides that where, as here, a defendant is granted probation, the probation officer is to determine the defendant's ability to pay all or part of the reasonable cost of probation supervision, and of conducting any presentence investigation and preparing any presentence report. The probation officer is required to "inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver." (*Ibid.*)

If the defendant does not waive the right to a court determination of ability to pay and the payment amount, subdivision (b) of section 1203.1b requires the probation officer to refer the matter to the court for a hearing to determine the amount of payment and the manner in which payments are to be made. The court must order the defendant to pay reasonable costs if it determines he or she has the ability to pay based on the report. Subdivision (b)(1) of the statute entitles the defendant, at a minimum, to the opportunity to be heard in person, to present witnesses and documentary evidence, to confront and cross-examine adverse witnesses, to have the evidence disclosed to him or her, and to a written statement of the findings of the court or probation officer.

Under section 1203.1b, subdivision (e), "'ability to pay' means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the ... presentence report, ... and probation supervision ..., and shall include, but shall not be limited to, the defendant's: [¶] (1) Present financial position. [¶] (2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonably discernible future financial position. [¶] (3) Likelihood that the defendant shall be able to obtain employment within the one-year

period from the date of the hearing. [¶] (4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs."

The record gives us no assurance defendant was ever told he was entitled to a hearing on his ability to pay, or knowingly and intelligently waived his right to a court determination on that issue.⁶ "We recognize that section 1203.1b and other recoupment statutes reflect a strong legislative policy in favor of shifting costs arising from criminal acts back to convicted defendants and replenishing public coffers from the pockets of those who have directly benefited from county expenditures. [Citations.]" (*People v. Bradus, supra*, 149 Cal.App.4th at p. 643.) The fact remains, however, that section 1203.1b sets out certain procedures that must be followed in order for probation costs to be recouped (*People v. Bradus, supra*, 149 Cal.App.4th at p. 642, fn. 4), and the record here contains no showing of compliance with the statutory requirements (see *People v. O'Connell* (2003) 107 Cal.App.4th 1062, 1067-1068; *People v. Hall* (2002) 103 Cal.App.4th 889, 892-893). Upon remand, the court must determine defendant's ability to pay, and any payment amount and manner of payment, as directed by section 1203.1b.⁷

3. *Alcohol-Related Probation Conditions*

Defendant contends the conditions of probation that he not use alcohol or visit any place alcohol is being consumed, to which he objected at sentencing, are invalid and must be stricken. The People say the trial court properly ordered defendant not to consume

⁶ Although the document titled "Fresno County Courts Probation Department Recommendations and Court Orders" (full capitalization & boldface omitted) states that defendant was entitled to a court hearing to determine the payment amount and ability to pay with respect to the costs of probation, the document did not include a waiver, and the copy contained in the record is not signed by defendant.

⁷ Because we are remanding the matter for additional proceedings pursuant to sections 987.8 and 1203.1b, we need not address defendant's claim that his right to due process was violated by failure to comply with those statutes.

alcohol or be present in a place where the primary items for sale are alcoholic beverages. We agree.

A sentencing court “has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions. [Citations.]” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) Because a condition of probation must serve a purpose specified in section 1203.1 (*People v. Olguin* (2008) 45 Cal.4th 375, 379), the court has the power to impose any “reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer” (§ 1203.1, subd. (j)).

“We review conditions of probation for abuse of discretion. [Citations.]” (*People v. Olguin, supra*, 45 Cal.4th at p. 379.) “As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or ““exceeds the bounds of reason, all of the circumstances being considered.”” [Citations.] [Citation.]” (*People v. Carbajal, supra*, 10 Cal.4th at p. 1121.) “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ [Citation.]” (*People v. Lent* (1975) 15 Cal.3d 481, 486, fn. omitted.) “This test is conjunctive — all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality. [Citation.]” (*People v. Olguin, supra*, 45 Cal.4th at pp. 379-380.) “Insofar as a probation condition serves the statutory purpose of ‘reformation and rehabilitation of the probationer,’ [citation] it necessarily follows that

such a condition is ‘reasonably related to future criminality’” (*People v. Balestra* (1999) 76 Cal.App.4th 57, 65.)

Whether imposition of a no-alcohol condition of probation lies within the trial court’s discretion depends on the facts of the particular case. (*People v. Lindsay* (1992) 10 Cal.App.4th 1642, 1644.) In *People v. Smith* (1983) 145 Cal.App.3d 1032 (*Smith*), for example, the appellate court upheld such a condition where the defendant pled guilty to possession of PCP. The record showed the defendant, who was 26 years old, had extensive involvement with drugs dating back to the time he was 11, when he began using marijuana and cocaine. He was under the influence of PCP when arrested in the present case, and had a long criminal record that included a conviction for armed robbery. (*Id.* at p. 1034.) Taking the effects of alcohol consumption into account with the fact the defendant was emotionally unstable, had a poorly integrated personality, and had been convicted of criminal offenses against society, the appellate court found no abuse of discretion in imposition of the no-alcohol condition of probation. (*Id.* at p. 1035.) In light of the nexus between drug use and alcohol consumption, the court concluded the condition was reasonably related to the defendant’s crime and to future criminality. (*Ibid.*)

In *People v. Kiddoo* (1990) 225 Cal.App.3d 922 (*Kiddoo*), disapproved on another ground in *People v. Welch* (1993) 5 Cal.4th 228, 237, the defendant, who was 33 years old at the time, pled guilty to possession of methamphetamine. He told the probation officer that he had become involved in the sale of drugs to support a gambling habit; he had used marijuana, methamphetamine, amphetamine, cocaine, and alcohol since he was 14 years old; he had had no prior problem; and he was a social drinker and used methamphetamine sporadically. His prior record consisted of unlawfully taking or driving a vehicle at age 15 and possession of marijuana at age 22. (*Kiddoo, supra*, 225 Cal.App.3d at p. 927.) In striking the no-alcohol condition of probation, the appellate court observed that nothing in the record suggested alcohol was related to the crime for

which the defendant was convicted; moreover, since it was not a crime to possess or consume alcohol, or to frequent places where alcoholic beverages were the chief item of sale, the probation condition had to be reasonably related to future criminal activity in order to be valid. The court found no factual indication in the record that, in the defendant's case, the proscribed behavior was reasonably related to future criminal behavior. (*Id.* at pp. 927-928.)

In *People v. Lindsay*, *supra*, 10 Cal.App.4th 1642, the defendant pled guilty to the sale of cocaine and then challenged the imposition of a no-alcohol condition. After examining *Smith* and *Kiddoo*, the appellate court found the condition of probation to be reasonably related to the defendant's crime and to future criminality. The court observed that the defendant admitted committing the crime to support his abuse of cocaine, using alcohol since the age of 10, and having an addictive personality and an alcohol problem. The court found a nexus between alcohol consumption and drug use and that, because a person's exercise of judgment may be impaired by alcohol consumption, such consumption could lead the defendant to give in to the use of drugs. (*People v. Lindsay*, *supra*, 10 Cal.App.4th at pp. 1644-1645.)

In *People v. Beal* (1997) 60 Cal.App.4th 84, the defendant pled guilty to possession of methamphetamine for sale and possession of methamphetamine. (*Id.* at p. 85.) The Court of Appeal found the imposition of a no-alcohol condition to be within the trial court's sound discretion, reasoning: "Based on the relationship between alcohol and drug use, we conclude that substance abuse is reasonably related to the underlying crime and that alcohol use may lead to future criminality where the defendant has a history of substance abuse and is convicted of a drug-related offense." (*Id.* at p. 87.)

In the present case, defendant was not convicted of a drug-related offense, and nothing in the record suggests alcohol had anything to do with his crime. Nevertheless, this is not a situation in which the trial court was confronted with a defendant who consumed no alcohol or drank only on occasion and then only in moderation. Rather,

despite the fact he had only been drinking for some three years, defendant had progressed to the point where he ingested a *case* of beer at a time.

With the use of alcohol comes “[s]ensorial impairment ... [and] a lessening of internalized self-control Alcoholic euphoria is accompanied by activity and aggressive behavior Drinking at any time, even for the social, controlled drinker who can stop at will, can lead to a temporary relaxation of judgment, discretion, and control.... The impairment of judgment and motor skills resulting from the consumption of alcohol will ... vary with each individual depending upon the amount of alcohol they have consumed in a given period of time, their weight, age, and whether they have been eating. The bottom line, however, is the undisputed fact that the physical effects of alcohol are not conducive to controlled behavior.” (*Smith, supra*, 145 Cal.App.3d at pp. 1034-1035, fns. omitted.)

In light of defendant’s level of alcohol consumption, we find a rational factual basis between the alcohol-related conditions of probation imposed by the trial court and the prevention of future crime. (See *In re Martinez* (1978) 86 Cal.App.3d 577, 583.) Accordingly, the trial court did not abuse its discretion by requiring, as a condition of probation, that defendant not use or possess alcoholic beverages and that he not be present in any establishment where the primary items for sale are alcoholic beverages.⁸

⁸ At sentencing, the trial court actually directed defendant in part “not to visit any place where alcohol is being consumed.” By urging us to uphold the more narrowly drawn presence condition contained in the minute order, the People implicitly concede the condition as stated by the court is overly broad. On the facts of this case, there is simply no reasonable relationship between defendant’s reformation and rehabilitation and his being in a place in which, for example, someone is consuming wine as part of Communion.

Defendant does not challenge the lack of scienter requirement in the alcohol-related conditions. “However, there is now a substantial uncontradicted body of case law establishing, as a matter of law, that a probationer cannot be punished for presence, possession, association, or other actions absent proof of scienter.” (*People v. Patel* (2011) 196 Cal.App.4th 956, 960; see, e.g., *In re Sheena K.* (2007) 40 Cal.4th 875, 891-

4. *Amendment of Sentencing Minute Order*

The minute order of the January 11, 2011, sentencing hearing states, in item 23 on page 2, “Obey all laws.” In reality, the trial court expressly declined to impose such a condition of probation. Defendant now contends, and the People concede, that the minute order must be amended to conform to the trial court’s oral pronouncement of judgment.

“When there is a discrepancy between the minute order and the oral pronouncement of judgment, the oral pronouncement controls. [Citation.]” (*People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073, citing *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) “The clerk cannot supplement the judgment the court actually pronounced by adding a provision to the minute order and the abstract of judgment. [Citation.]” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 387-388.) Accordingly, the “[o]bey all laws” condition must be stricken from the minute order.⁹

DISPOSITION

The judgment of conviction is affirmed. The portions of the order granting probation that require defendant to pay attorney fees pursuant to Penal Code section 987.8, and the costs of probation pursuant to Penal Code section 1203.1b, are vacated, and the case is remanded to the trial court for the redetermination of said fees and costs as discussed in this opinion. The order placing defendant on probation is

892.) If defendant desires to make explicit the knowledge requirement, he can ask the trial court to make the appropriate modifications upon remand. (*People v. Patel, supra*, 196 Cal.App.4th at p. 960, fn. 4.)

⁹ In addition, item 22 on page 2 of the minute order incorrectly recites the court’s orders with respect to attorney fees. We do not direct correction of the minute order in this regard, because we are remanding the case for further proceedings with respect to payment of attorney fees and probation fees and costs. The minute order issued at the conclusion of those proceedings will supersede the minute order of January 11, 2011, at least with respect to those matters.

otherwise affirmed. The trial court is directed to cause the sentencing minute order to be corrected consistent with this opinion.

DETJEN, J.

WE CONCUR:

CORNELL, Acting P.J.

POOCHIGIAN, J.