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

THE PEOPLE,

Plaintiff and Respondent,

v.

ROY BERT HOSKISON,

Defendant and Appellant.

F062179

(Super. Ct. Nos. VCF219272 &  
VCF234250)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

Donna J. Hooper, 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, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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

## STATEMENT OF THE CASE

On April 24, 2009, appellant, Roy Bert Hoskison, pled no contest in case No. VCF219272 to failure to update his sex offender registration (Pen. Code, § 290.012, subd. (a)).<sup>1</sup> Appellant also admitted two prior prison term enhancements (§ 667.5, subd. (b)). On May 18, 2009, appellant was placed on probation for three years and ordered to pay a \$250 restitution fine and a \$250 probation revocation fine, should his probation be revoked.

On July 22, 2010, in exchange for the dismissal of several other allegations, appellant pled no contest in case No. VCF234250 to failure to file a change of address (§ 290.013, subd. (a)). Appellant also pled no contest to an allegation that he violated his probation in case No. VCF219272.<sup>2</sup> Appellant admitted two prior prison term enhancements and two prior serious felony convictions pursuant to the three strikes law. Under the plea agreement, appellant would not receive more than a four-year prison term for all cases. At the sentencing hearing, the court granted the prosecutor's motion to dismiss the remaining allegations.

On August 25, 2010, the trial court denied appellant's request to strike both serious felony allegations. The trial court sentenced appellant to prison for the midterm of two years, doubled to four years pursuant to the three strikes law. The court ordered that appellant serve a concurrent sentence of two years in case No. VCF219272.

In case No. VCF234250, the court granted total custody credits of 265 days and imposed a restitution fine of \$3,200. In case No. VCF219272, the court granted total custody credits of 529 days. The court also imposed new fines in case No. VCF219272 pursuant to sections 1202.4, subdivision (b) and 1202.44 of \$500. The court further

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Penal Code.

<sup>2</sup> Appellant pled no contest to unrelated misdemeanor offenses.

ordered fines pursuant to section 290.3 of \$300 in case No. VCF219272 and \$500 in case No. VCF234250.

Appellant contends the trial court erred in imposing fines pursuant to section 290.3 and in increasing his restitution fines in case No. VCF219272 from \$250 to \$500.

Respondent concedes both errors.

### **SECTION 290.3 RESTITUTION FINES**

We concur with the parties that the section 290.3 fines imposed in both actions were not statutorily authorized. Section 290.3, subdivision (a) provides that fines shall be imposed where offenders violate any of the enumerated offenses set forth in section 290, subdivision (c). Appellant's current offenses are violations of sections 290.012 and 290.013. Neither offense is enumerated in section 290, subdivision (c).

This constitutes an unauthorized sentence that can be corrected at any time even if there has not been an objection to the trial court. Furthermore, the error can be corrected on remand without the presence of the defendant. (*People v. Smith* (2001) 24 Cal.4th 849, 852-854 (*Smith*); also see *People v. Talibdeen* (2002) 27 Cal.4th 1151, 1157.)

### **RESTITUTION AND PROBATION REVOCATION FINES**

We also concur with the parties that the restitution and probation revocation fines of \$500 imposed by the trial court in case No. VCF219272 was an additional unauthorized sentence. On May 18, 2009, appellant was placed on probation for three years and ordered to pay a \$250 restitution fine and a \$250 probation revocation fine, should his probation be revoked. Restitution fines may be imposed once at the time of conviction. There is no statutory provision for the imposition of a different restitution fine (or probation revocation fine) at the time probation is revoked. This error can also be corrected without an objection by the defendant to the trial court. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 822-823.) The error can be corrected on remand without the defendant's presence in court. (*Smith, supra*, 24 Cal.4th at p. 854.) We

further note that appellant's name is misspelled in the abstract of judgment as "Hoskinson" rather than as "Hoskison," which is how appellant's name is spelled throughout the proceedings.

### **DISPOSITION**

The case is remanded with directions to the trial court to strike the two fines imposed pursuant to Penal Code section 290.3, to impose the original restitution and probation revocation fines of \$250 each in case No. VCF219272, and to reflect the proper spelling of appellant's name — "Hoskison." Appellant need not be present in court. The court shall prepare an amended abstract of judgment reflecting these changes and forward it to the appropriate authorities. The judgment is otherwise affirmed.