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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN MICHAEL BATES,

Defendant and Appellant.

F062184

(Super. Ct. No. F10902031)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Houry A. Sanderson, Judge.

Julia Freis, 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., Gomes, J. and Franson, J.

INTRODUCTION

Appellant John Michael Bates contends the Penal Code section 1465.8¹ security fee must be reduced from \$40 to \$30 to reflect the amount of the fee in effect at the time of his conviction and not the increased amount in effect after conviction but prior to sentencing. The People concede the security fee must be reduced.

FACTUAL AND PROCEDURAL SUMMARY

Beginning October 4, 2009, through April 22, 2010, five Walgreens pharmacies, one Vons pharmacy, two Save Mart pharmacies, and two Rite Aid pharmacies were robbed. Multiple bottles of OxyContin and generic methadone were taken. The OxyContin was valued at over \$11,000. The bottle of OxyContin taken from a Walgreens pharmacy on April 22, 2010, was secured with a pronet tracking device. Police officers located Bates at his home pursuant to the tracking device.

Bates was charged with six counts of second degree robbery and four counts of attempted second degree robbery. On September 27, 2010, Bates entered into a negotiated plea agreement. Pursuant to the plea agreement, Bates pled no contest to the six robbery counts, the attempted robbery counts were dismissed, and a six-year lid on any prison sentence was specified as part of the agreement.

On January 25, 2011, the trial court denied probation and sentenced Bates to a total term of six years in state prison. Bates was ordered to pay a \$1,200 restitution fine pursuant to section 1202.4, subdivision (b), a \$1,200 restitution fine pursuant to section 1202.45, suspended unless parole is subsequently revoked, a court security fee of \$40 per count, for a total of \$240, pursuant to section 1465.8, subdivision (a)(1), and to pay victim restitution of \$11,853.68 pursuant to section 1202.4, subdivision (f).

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

DISCUSSION

Bates contends the court security fee of \$40 per count imposed pursuant to section 1465.8, subdivision (a)(1) must be reduced to \$30 per count because that was the amount of the fee in effect at the time of his conviction. The People agree with Bates.

Bates did not object to the amount of the fee at sentencing. The lack of an objection, however, does not constitute a forfeiture of the issue on appeal. The imposition of a fine or fee in excess of the statutory maximum at the time of conviction constitutes an unauthorized sentence. (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1205.) An unauthorized sentence may be challenged on appeal, even absent an objection in the trial court. (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.)

Section 1465.8 requires the imposition of a court security fee “on every conviction for a criminal offense.” (*Id.*, subd. (a)(1).) The negotiated plea was entered on September 27, 2010, and sentence was pronounced on January 25, 2011. On September 27, 2010, the amount of the specified fee was \$30 per conviction. The increase to \$40 per conviction went into effect on October 19, 2010. (Stats. 2010, ch. 720, § 33.)

The section 1465.8 security fee applies to a conviction. In *People v. Alford* (2007) 42 Cal.4th 749 (*Alford*), the California Supreme Court addressed section 1465.8. The *Alford* court determined that the Legislature intended section 1465.8 to apply where the conviction occurred on or after the statute’s effective date, regardless of when the crime occurred. (*Alford*, at pp. 754-756.) The date of conviction controls application of the statute. (See *People v. Castillo* (2010) 182 Cal.App.4th 1410 [addressing Gov. Code, § 70373].)

The fee in effect at the time of Bates’s conviction was \$30 per conviction. (Stats. 2009-2010, 4th Ex. Sess. 2009, ch. 22X, § 29.) The court security fee that should have been imposed was \$30 per conviction, for a total of \$180. We will order modification of the judgment to reflect the proper amount and direct preparation of a corrected abstract of judgment. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185-186.)

DISPOSITION

The judgment is modified to reflect a section 1465.8, subdivision (a)(1) court security fee of \$30 per conviction, for a total of \$180. In all other respects the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and forward a certified copy of the amended abstract to the appropriate authorities.