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

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD ALLEN PATALA,

Defendant and Appellant.

F062408

(Super. Ct. No. VCF216118 )

**OPINION**

APPEAL from a judgment of the Superior Court of Tulare County. Joseph A. Kalashian, Judge.

Sylvia Whatley Beckham, 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, Catherine Chatman and R. Todd Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

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Ronald Allen Patala (appellant) pleaded no contest to one count of receiving a stolen motor vehicle (Pen. Code, § 496d, subd. (a))<sup>1</sup> in exchange for a suspended three-year prison term. He subsequently violated probation and sentence was executed. On appeal, appellant contends that: 1) the restitution fine imposed as a condition of probation is unauthorized with execution of the prison term; 2) the court minutes and abstract of judgment must be amended to reflect the proper amount of the restitution fine; 3) the abstract of judgment must be corrected to reflect the proper conviction date and manner; and 4) the abstract of judgment must reflect the fines and fees imposed. We agree with his last two contentions, but in all other respects affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *Case No. 1*

On January 22, 2009, appellant's sister reported that someone had parked a stolen vehicle in the lot of her apartment complex. Appellant admitted that he took the vehicle from where it was parked on the street, unoccupied, with the motor running.

Appellant was subsequently charged in case No. VCF216118 (Case No. 1) with one count of unlawful driving or taking of William Lindsay's vehicle (Veh. Code, § 10851, subd. (a)) and one count of receiving a stolen vehicle (§ 496d, subd. (a).) It was further alleged that appellant had suffered a prior conviction (§ 666.5).

On February 4, 2009, appellant plead no contest to receiving a stolen vehicle and he admitted the prior conviction allegation. The count of unlawful taking of a vehicle was dismissed. The March 2009 probation report included a statement from Lindsay that damage to his vehicle was covered by insurance, but not the cost of the vehicle's tools and the toolbox, which he estimated to be \$1,500.

On March 6, 2009, the court sentenced appellant to the prison midterm of three years, execution of which was suspended, and appellant was placed on probation for a

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<sup>1</sup> All further statutory references are to the Penal Code unless noted otherwise.

period of three years with terms and conditions. Appellant was ordered to serve 365 days in local custody. As a term and condition of probation, the court ordered appellant to pay victim restitution of \$1,500 pursuant to section 1202.4, subdivision (f).

Case No. 2

On December 8, 2010, appellant was charged in case No. VCF242491 (Case No. 2), with one count of assault upon an officer with a deadly weapon (§ 245, subd. (c)), one count of unlawful taking or driving of a vehicle (Veh. Code, § 10851, subd. (a)), one count of receiving, withholding or concealing a stolen vehicle (§ 496d, subd. (a)), and one count of reckless evading a pursuing officer (Veh. Code, § 28002, subd. (a)). It also alleged that he had suffered two prior convictions (§ 666.5).

Appellant was found guilty by a jury of assault upon the officer with a deadly weapon, receiving a stolen vehicle and evading a pursuing officer with willful disregard. He was found not guilty of unlawful taking or driving of a vehicle.<sup>2</sup> The trial court later found true the allegation that appellant had suffered a prior conviction. The trial court also found appellant in violation of probation from his conviction in Case No. 1.

At sentencing on March 22, 2011, the trial court denied appellant probation on Case No. 2 and ordered that he serve an aggregate term of five years eight months. The court ordered appellant to pay various fees and fines, as well as victim restitution to the Dinuba Police Department.

As for Case No. 1, probation was terminated and the court ordered the three-year sentence executed, to be served concurrently with the sentence imposed in Case No. 2.

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<sup>2</sup> The jury was instructed that appellant could be found guilty of unlawful taking or driving of a vehicle or of receiving, withholding or concealing a stolen vehicle, but not both. (CALCRIM No. 3516.)

The court ordered appellant to pay victim restitution to Lindsay.<sup>3</sup> Appellant filed appeals in both Case No. 1 and Case No. 2.<sup>4</sup>

## DISCUSSION

### I. IS THE VICTIM RESTITUTION AWARD IN CASE NO. 1 UNAUTHORIZED IN CONJUNCTION WITH EXECUTION OF THE PRISON TERM?

While conceding that the victim restitution order in Case No. 1 was proper when issued as a condition of probation, appellant contends that, after probation was revoked and he was sentenced to state prison, the restitution order was no longer authorized because it is based on uncharged conduct. He argues that section 1202.4 authorizes restitution only for the losses caused by his receiving, withholding or concealing a stolen vehicle, to which he pled no contest, not to the theft of the vehicle, because that charge was dismissed. This contention is without merit.

#### Background

Appellant pled no contest in Case No. 1 to one count of unlawfully receiving, withholding or concealing a stolen vehicle. A prison term was imposed with execution suspended and probation granted. As a term of probation, appellant was ordered to pay \$1,500 in victim restitution to Lindsay, pursuant to section 1202.4, subdivision (f), for items of personal property missing from his stolen vehicle when recovered. After probation was later terminated, the suspended prison term was ordered to be executed and appellant was ordered to pay the victim restitution for the items of missing property.

#### Applicable Authority and Analysis

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<sup>3</sup> The amount of restitution is in dispute, as will be addressed, *post*.

<sup>4</sup> In September of 2011, after we denied appellant's request for consolidation of both appeals, appellant filed a motion requesting that we take judicial notice of the record in Case No. 2, which we now grant. (Evid. Code, § 452.) Our opinion in Case No. 2 is filed concurrently with this opinion.

Our State Constitution provides that “It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.” (Cal. Const., art. I, § 28, subd. (b)(13)(A).) The Legislature has affirmed this intent, providing in section 1202.4, subdivision (a)(1), that a “victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.”

Courts have interpreted section 1202.4 as limiting restitution awards to those losses arising out of the criminal activity that formed the basis of the conviction. Thus, when a court imposes a prison sentence following trial, section 1202.4 limits the scope of victim restitution to losses caused by the criminal conduct for which the defendant sustained the conviction. (*People v. Woods* (2008) 161 Cal.App.4th 1045, 1049 [defendant not required to pay restitution for economic loss resulting from murder when he was convicted as an accessory after the fact only]; *People v. Lai* (2006) 138 Cal.App.4th 1227, 1249 [portion of the restitution order attributable to fraudulently obtained aid before charged period invalidated].)

However, this limitation does not apply in the context of grants of probation. “California courts have long interpreted the trial courts’ discretion to encompass the ordering of restitution as a condition of probation even when the loss was not necessarily caused by the criminal conduct underlying the conviction. Under certain circumstances, restitution has been found proper where the loss was caused by related conduct not resulting in a conviction [citation], by conduct underlying dismissed and uncharged counts [citation], and by conduct resulting in an acquittal [citation].” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

When victim restitution is ordered in conjunction with an award of probation, as the trial court did here, restitution is not strictly limited in the same fashion as if the defendant had been sentenced to prison. (See, e.g., *People v. Lent* (1975) 15 Cal.3d 481,

486 [ordering victim restitution as a probation condition for monies allegedly defrauded but for which the defendant was acquitted].) The rationale is that because “[p]robation is an ‘an act of clemency and grace,’ [citation] not a matter of right,” the trial court can impose probation conditions that it could not otherwise impose. (*People v. Anderson* (2010) 50 Cal.4th 19, 32.) A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender is convicted; (2) relates to conduct that is not itself criminal; and (3) requires or forbids conduct which is not reasonably related to future criminality. (*People v. Lent, supra*, at p. 486.) Restitution where probation is granted is therefore not limited to damages specifically caused by the crime of which the defendant was convicted.

Appellant does not argue against this basic tenet. Instead, he argues that, although the restitution may have been valid when probation was granted, once probation was terminated, restitution based on acts for which he was not convicted is no longer authorized. We disagree.

Section 1202.4, subdivision (m) provides: “In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.” Thus, the restitution ordered as a condition of probation survived the revocation of appellant’s probation. (See *People v. Chambers* (1998) 65 Cal.App.4th 819, 820 [“[A] restitution fine imposed at the time probation is granted survives the revocation of probation”].)

*People v. Kleinman* (2004) 123 Cal.App.4th 1476 (*Kleinman*), is instructive. In *Kleinman*, the defendant hit a pedestrian while he was driving and sped off. The victim suffered a fractured tibia requiring surgery. (*Id.* at p. 1478.) The defendant was subsequently charged with hit and run causing injury. Pursuant to agreement, he pled no

contest to the charge and the trial court imposed a two-year prison sentence, but suspended execution and placed the defendant on probation for three years with terms and conditions. Included was the condition that the defendant pay direct restitution to the victim, the amount yet to be determined. (*Id.* at pp. 1478-1479.) After the defendant was found to be in violation of probation, the trial court revoked probation, sentenced him to prison, and ordered that he pay the victim restitution in the amount of \$9,000. (*Id.* at p. 1479.)

The defendant in *Kleinman* argued, as does appellant here, that, although the restitution order issued as a condition of probation was proper, it became unauthorized after probation was revoked because section 1202.4 authorizes restitution only for victim's injuries caused by criminal acts, and that the hit and run offense is one of fleeing the scene, not causing injury. Instead, as argued by the defendant, the noncriminal accident caused the injury. (*Kleinman, supra*, 123 Cal.App.4th at p. 1479.)

The court in *Kleinman* disagreed, finding that, pursuant to section 1202.4, subdivision (m), the restitution fine imposed as a condition of probation remained in force despite revocation of probation. (*Kleinman, supra*, 123 Cal.App.4th at p. 1482.) "Having voluntarily agreed to the terms of probation, a defendant cannot use his own breach of those terms as a basis for evading the properly imposed restitution obligation he assumed. A probationer is not entitled to be rewarded by virtue of his violation of a probation condition." (*Ibid.*)

We agree with the reasoning of *Kleinman*, and reject appellant's argument to the contrary.

## II. MUST THE VICTIM RESTITUTION ORDER IN CASE NO. 1 BE CORRECTED IN THE AMENDED ABSTRACT OF JUDGMENT?

Appellant next argues that, if the restitution order is not unauthorized, the amount of that restitution recorded in the court minutes and abstract of judgment must be corrected to comport with the oral pronouncement of judgment. We disagree.

### Background

When appellant was originally sentenced in Case No. 1, he was ordered to pay victim restitution pursuant to section 1202.4, subdivision (f), to Lindsay in the amount of \$1,500. Following conviction in Case No. 2, probation in Case No. 1 was revoked and he was sentenced on that case. The probation report filed in anticipation of sentencing on March 22, 2011, stated that appellant had not made any payment toward the \$1,500 victim restitution ordered in Case No. 1, and recommended that the restitution order remain “in full force and effect.” After the suspended sentence in Case No. 1 was executed, the trial court, according to the reporter’s transcript at the sentencing hearing on March 22, 2011, ordered appellant to pay victim restitution in the amount of “\$1,200” to W.L. But the minute order for that date states that the court imposed victim restitution in the amount of \$1,500, as does the subsequent abstract of judgment.

### Applicable Authority and Analysis

As a general rule, a record that is in conflict will be harmonized if possible. If it cannot be harmonized, whether one portion of the record should prevail as against a contrary statement in another portion of the record will depend upon the circumstances of each particular case. (*People v. Harrison* (2005) 35 Cal.4th 208, 226.) More specifically, when a clerk’s transcript conflicts with a reporter’s transcript, the question of which of the two controls is determined by consideration of the circumstances of each case. (*People v. Smith* (1983) 33 Cal.3d 596, 599; *People v. Malabag* (1997) 51 Cal.App.4th 1419, 1422-1423.)

Here, each and every time the direct restitution award was referred to, other than the oral pronouncement at sentencing hearing in March 2011 as recorded in the reporter’s transcript, it was stated as \$1,500. There was no discussion that it should be anything other than that and, in fact, the probation officer specifically recommended that the amount remain \$1,500.

Since the weight of the record favors the version appearing in the clerk's transcript, we find the clerk's transcript controlling and reject appellant's claim to the contrary. (*People v. Malabag, supra*, 51 Cal.App.4th at pp. 1422-1423; *People v. Smith, supra*, 33 Cal.3d at p. 599.)

### III. CORRECTIONS TO THE ABSTRACT OF JUDGMENT

Appellant makes two additional arguments that the abstract of judgment must be corrected. First, that the date and manner of the conviction in Case No. 1 in the abstract of judgment must be corrected. And second, that the fines received in Case No. 2 must be identified in the abstract of judgment. We agree with both contentions.

#### *Date and Manner of Conviction*

In the abstract of judgment, the date of conviction in Case No. 1 is listed as "2-17-11," and that appellant was found guilty after a court trial. This date and manner of conviction holds true for Case No. 2, but not Case No. 1. Instead, the record is clear that appellant pleaded no contest to the charge of receiving, withholding or concealing a stolen vehicle in Case No. 1 on February 4, 2009. The abstract of judgment must therefore be corrected in section 1, to show that appellant was convicted in Case No. 1 on "2-4-09" and that the conviction was by "plea."

#### *Fines Imposed*

At sentencing following conviction in Case No. 2, the probation officer's report recommended that the court order a fine in the amount of \$1,000 pursuant to Vehicle Code section 2800.2, and that appellant be ordered to pay a total amount of \$4,000, which consisted of the \$1,000 fine plus numerous penalty assessments detailed in the report. The court then ordered appellant to pay "\$4,000 as set forth in Paragraph 11 of Page 16 of the probation report." The resulting abstract of judgment states, "Defendant to pay \$4,000, as stated on Probation Officer's report page 16, item 11."

Appellant does not contest imposition of the fees, but contends the court should have specified how the fines, fees, penalties and assessments were calculated. Because

all fines, fees and assessments must be set forth in the abstract of judgment, we will remand and direct the trial court to separately list all fines, fees, and penalties imposed. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200-1201.)

**DISPOSITION**

The matter is remanded for the trial court to correct the abstract of judgment to accurately list the date and manner of conviction in Case No. VCF216118 (Case No. 1) as discussed above, and to separately list all fines, fees, and penalties imposed. An amended abstract of judgment shall be forwarded to the appropriate authorities. In all other respects, the judgment is affirmed.

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Franson, J.

WE CONCUR:

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Wiseman, Acting P.J.

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Poochigian, J.