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

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE ARMANDO ANDRADE,

Defendant and Appellant.

F064301

(Super. Ct. Nos. BF138357A &  
BF139450A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Eric Bradshaw,  
Judge.

Kendall Dawson Wasley, 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, Charles A. French and John G.  
McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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

Defendant Jorge Armando Andrade was convicted in separate cases of being a felon in possession of ammunition and transporting methamphetamine. The only issues in this appeal concern the fines and fees included in his sentences.

We agree with Andrade that the restitution fine (Pen. Code, § 1202.4, subd. (b))<sup>1</sup> and the matching parole revocation restitution fine (§ 1202.45) in the ammunition case must be reduced from \$240 each to \$200 each. Also, the parties correctly agree that the processing fee (former § 1205, subd. (d)) must be \$30 in that case, not the \$45 the court imposed.

In the drug case, the court imposed a \$240 restitution fine, and the record is unclear on whether it imposed any parole revocation restitution fine. Again, the restitution fine must be reduced to \$200. We reject the People's contention that a matching parole revocation restitution fine must be imposed for this offense, however. Since it is a county jail offense, there will be no parole for it, so the parole revocation restitution fine is inapplicable.

We will order the necessary corrections to the abstracts of judgment and affirm the judgments as modified.

### **FACTUAL AND PROCEDURAL HISTORIES**

In case No. BF138357A, Andrade was charged with one count of being a felon in possession of ammunition. (§ 12316, subd. (b)(1).) The information further alleged that Andrade had three prior felony convictions and, within the last five years, had served a prior prison term. A jury found Andrade guilty as charged. The offense took place on August 27, 2011.

In case No. BF139450A, Andrade pleaded no contest to one count of transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and admitted a prior drug conviction. The offense took place on November 21, 2011.

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

The court sentenced Andrade in both cases on January 27, 2012. In the ammunition case, the court imposed a three-year term in state prison, consisting of the two-year middle term plus one year for the prior prison term enhancement. In the drug case, the court imposed a concurrent term of six years in county jail, consisting of the upper term of three years plus a three-year enhancement for the prior drug conviction.

The fines and fees imposed in the ammunition case included a restitution fine of \$240 (§ 1202.4, subd. (b)) and a parole revocation restitution fine of \$240, which was suspended unless parole was revoked (§ 1202.45).

In the drug case, the court imposed a fee of \$45 for processing and collection of fines, pursuant to former section 1205, subdivision (d) (now subdivision (e)). The court also imposed a restitution fine of \$240. The record is unclear about whether the court imposed the parole revocation restitution fine in the drug case. The court's minute order states that it did so. In the court's oral pronouncement of sentence as reflected in the reporter's transcript of the sentencing hearing, however, the court did not mention the parole revocation restitution fine. The abstract of judgment for the drug case is missing from the appellate record.

## **DISCUSSION**

### ***I. Ammunition case***

#### ***A. Restitution and parole revocation restitution fines***

Section 1202.4 requires the court to impose a restitution fine in every criminal case unless the court finds compelling and extraordinary reasons not to impose it. (§ 1202.4, subd. (b).) In addition, if the sentence “includes a period of parole,” the court must impose a “parole revocation restitution fine in the same amount” as the restitution fine. (§ 1202.45, subd. (a).)

Under the version of section 1202.4 in effect in 2011, when the crimes were committed in this case, the minimum restitution fine for a felony was \$200. (Former

§ 1202.4, subd. (b)(1).) An amendment raised the amount to \$240 “starting on January 1, 2012.” (§ 1202.4, subd. (b)(1); Stats. 2011, ch. 358, § 1.)

Here, the sentencing took place in January 2012 and the court imposed restitution and parole revocation restitution fines of \$240 each. Andrade argues that the ex post facto clauses of the state and federal Constitutions bar the application of fines to offenses that took place after the fines became effective. (See, e.g., *Fox v. Alexis* (1985) 38 Cal.3d 621, 630 [ex post facto clauses prohibit retroactive application of increased criminal sanctions]; *People v. Palomar* (1985) 171 Cal.App.3d 131, 136 [§ 1202.4 could not be applied to offenses occurring before its original effective date, Jan. 1, 1984].)

The People do not deny that if the court intended to impose the minimum fines, it erred in applying the \$240 minimum instead of the \$200 minimum in effect at the time the crime was committed. They maintain, however, that Andrade has failed affirmatively to demonstrate that this was the court’s intent. The court has discretion to impose fines exceeding the minimum, and the record does not prove the court did not intend to do so.

The People’s argument is unpersuasive. Nothing in the record supports the notion that the court intended to impose a fine greater than the minimum by the arbitrary amount of \$40. The overwhelming probability is that the court simply used the new minimum by mistake. This amounted to an inadvertent retroactive application of a new minimum penalty. We will order it corrected.

## ***II. Drug case***

### ***A. Processing fee***

Former section 1205, subdivision (d) (now subdivision (e)), provides in part: “The defendant shall pay to the clerk of the court or the collecting agency the fee established for the processing of the accounts receivable that are not to be paid in installments. The fee shall equal the administrative and clerical costs, as determined by the board of supervisors, or by the court, depending on which entity administers the account, except that the fee shall not exceed thirty dollars (\$30).”

The parties agree that the court erred when it imposed a fee of \$45. We will order it reduced to \$30.

***B. Restitution fine***

The court imposed a restitution fine of \$240 for the drug offense. For the reasons discussed above, the applicable minimum was \$200, and the record is most plausibly understood as indicating that the court intended to impose the minimum. We will order the fine reduced.

***C. Parole revocation restitution fine***

The court's minute order states that a parole revocation restitution fine of \$240 was imposed for the drug offense; the transcript of the court's oral remarks does not reflect imposition of this fine; and the abstract of judgment is missing. The People maintain that the fine was required and ask us to order the court to make sure it is included in the abstract of judgment. Andrade argues that the fine is inapplicable to the drug offense and the court properly omitted it from its oral remarks.

In 2011, when the offense was committed, former section 1202.45 provided: "In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4."<sup>2</sup>

We agree with Andrade's view that this fine does not apply because the sentence for the drug offense does not include a period of parole. Under the 2011 Realignment Legislation (Stats. 2011, ch. 15, § 1; Stats. 2011, 1st Ex. Sess., ch. 12, § 1), a violation of Health & Safety Code section 11379, subdivision (a), is punishable by a term in county

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<sup>2</sup>A subsequent amendment requires an equivalent fine in cases where the sentence includes a period of postrelease community supervision or mandatory supervision, as opposed to parole. (§ 1202.45, subd. (b); Stats. 2012, ch. 762, § 1.) The People do not argue that the amendment applies to this case.

jail unless the defendant has been convicted of a violent or serious prior felony. (§ 1170, subd. (h); Health & Saf. Code, § 11379, subd. (a).) There was no allegation that Andrade had a prior violent or serious felony conviction, and the court stated that it was committing Andrade to the county jail for this offense. A period of parole is included in a sentence committing a defendant to state prison, not county jail. (§ 3000, subd. (a)(1).)

The court correctly omitted this fine from its oral pronouncement of sentence. The minute order is in error. We will order the court to ensure that the abstract of judgment omits the fine.

### **DISPOSITION**

The trial court is ordered to amend the abstracts of judgment in the following particulars. In case No. BF138357A, the restitution fine (§ 1202.4, subd. (b)) and the parole revocation restitution fine (§ 1202.45) shall be reduced to \$200 each. In case No. BF139450A, the processing fee (former § 1205, subd. (d)) shall be reduced to \$30 and the restitution fine (§ 1202.4, subd. (b)) shall be reduced to \$200. If the abstract indicates a parole revocation restitution fine (§ 1202.45) in that case, that fine must be deleted. The judgments are affirmed with these modifications. The trial court shall forward the amended abstracts to the appropriate correctional authorities.