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

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND CHARLES LEWIS,

Defendant and Appellant.

H037349

(Santa Clara County

Super. Ct. No. B1050315)

Defendant Raymond Charles Lewis pleaded no contest to carjacking and to evading the police and admitted the enhancement that he was armed with a firearm. He was sentenced to a five-year prison term.

Defendant claims that the court erred in imposing a criminal justice administration (booking) fee of \$129.75 because it did not make a determination of defendant's ability to pay the fee. He acknowledges that the statute under which the booking fee was imposed here does not include a requirement that the court determine that the defendant has the ability to pay the fee. But he contends that comparable booking fee statutes contain an ability-to-pay requirement, and therefore imposing the booking fee here without such a determination violated his equal protection rights under the federal and state Constitutions. Defendant also argues that the imposition of a \$10 fine plus penalty assessment, pursuant to Penal Code section 1202.5, was error because there was no substantial evidence of his ability to pay the fine. He contends further that if the claims

concerning the booking fee and fine were forfeited, we should nonetheless consider them because he received prejudicially ineffective assistance of counsel. Lastly, defendant urges that the concurrent sentence imposed on the misdemeanor conviction is not properly reflected on the abstract of judgment.

Notwithstanding the Attorney General's assertion that defendant's constitutional challenge to the imposition of the booking fee was forfeited, we elect to address the controversy on the merits and conclude that the equal protection claim fails. We hold further that defendant forfeited the challenge to the fine and penalty assessment imposed pursuant to Penal Code section 1202.5. And we reject his ineffective assistance of counsel argument. Lastly, we agree that the abstract of judgment should be amended. Accordingly, we will affirm the judgment and direct the court to amend the abstract.

FACTS¹

Palo Alto police officers responded at approximately 4:00 a.m. on October 10, 2010, to a reported carjacking. The victim reported that she was parked in her Toyota Prius along the curb on University Avenue in Palo Alto waiting for her husband, who had finished loading his musical instruments after completing a weekly show he performed with his band. Defendant opened the driver's door, pointed a handgun at the victim, and ordered her out of the car. The victim complied, and defendant drove away.

At 4:26 that morning, a San Mateo police officer, unaware of the hijacking, attempted to stop the Prius. Defendant drove off in response to the officer's order to turn off the car, and he eluded the officer's pursuit. The unoccupied car was thereafter located and defendant was apprehended.

¹ Our summary of the facts is taken from the probation report.

PROCEDURAL BACKGROUND

Defendant was charged by information filed April 4, 2011, with carjacking where the victim is the driver of the vehicle, a felony (Penal Code, § 215), and fleeing a pursuing peace officer's motor vehicle, a misdemeanor (Veh. Code, § 2800.1, subd. (a)). It was alleged further that defendant personally used a firearm in the commission of the offense (former Penal Code, § 12022.53, subd. (b)). The information was later amended to substitute a firearm enhancement pursuant to former Penal Code section 12022, subdivision (a)(1) in place of the pleaded enhancement. On May 17, 2011, defendant pleaded no contest to the two counts alleged and admitted the firearm allegation, as amended. The plea was entered with the understanding that he would receive a prison sentence of not less than three, nor more than six years.

On August 8, 2011, the court sentenced defendant on the carjacking count to the midterm of five years, imposed a concurrent 30-day sentence for the misdemeanor conviction, and stayed additional punishment for the firearm enhancement. Defendant filed a timely notice of appeal based on the sentence or other matters occurring after the plea.

DISCUSSION

I. *Imposition of the Booking Fee*

A. *Background and Contentions*

At sentencing, the court imposed a criminal justice administration fee of \$129.75, payable to the City of Palo Alto. The court did not specify the statutory authority under which this booking fee was being imposed. Further, the court neither inquired about defendant's ability to pay the fine nor made a specific finding about defendant's ability to pay.

Defendant contends that the court erred in its imposition of the booking fee. He contends that the statute under which the fee was imposed was Government Code section 29550.1.² (The Attorney General does not contest this assertion.) He asserts that the statute violates his right to equal protection under the United States and California Constitutions. In summary, this constitutional challenge runs as follows:

Section 29550.1 provides, *inter alia*, that where a city's officer or agent arrests an individual, the city is entitled to recover from the arrestee any criminal justice administration fee imposed upon it by a county.³ The code section makes no mention of the booking fee's imposition being conditioned on the defendant's ability to pay the fee. In contrast, other statutes that address booking fees—specifically, section 29550, subdivisions

² All further statutory references are to the Government Code unless otherwise stated.

³ “Any city, special district, school district, community college district, college, university, or other local arresting agency whose officer or agent arrests a person is entitled to recover any criminal justice administration fee imposed by a county from the arrested person if the person is convicted of any criminal offense related to the arrest. A judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the city, special district, school district, community college district, college, university, or other local arresting agency for the criminal justice administration fee.” (Gov. Code § 29550.1.)

(c) and (d),⁴ and section 29550.2, subdivision (a)⁵—contain specific requirements that the court determine that the defendant has the ability to pay the fee. Defendant argues: “[T]he three statutes treat the similarly situated persons differently. For a defendant who, like appellant, is booked into a county jail and ultimately is convicted and not granted probation, the statutes make arbitrary distinctions as to whether an order to pay a booking fee is mandatory or discretionary[,] and whether imposition of the fee is contingent on a finding that a defendant has the ability to pay the fee. The distinction is based solely on what agency makes the underlying arrest. In other words, because appellant was arrested by a city police officer, the statute apparently imposes a mandatory booking fee requirement without regard to ability to pay (section 29550.1). Had he been arrested by a county sheriff’s deputy, the fee would have been discretionary (section 29550). Had

⁴ “Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. . . . [¶] (d) When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency: [¶] (1) A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt. [¶] (2) The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs.” (§ 29550, subdivisions (c) and (d).)

⁵ “Any person booked into a county jail pursuant to any arrest by any governmental entity not specified in Section 29550 or 29550.1 is subject to a criminal justice administration fee for administration costs incurred in conjunction with the arresting and booking if the person is convicted of any criminal offense relating to the arrest and booking. . . . If the person has the ability to pay, a judgment of conviction shall contain an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution shall be issued on the order in the same manner as a judgment in a civil action, but the order shall not be enforceable by contempt. The court shall, as a condition of probation, order the convicted person to reimburse the county for the criminal justice administration fee.” (§ 29550.2, subd. (a).)

appellant been arrested by any other type of agency, no booking fee could be imposed unless the court first determined that he was able to pay it (section 29550.2).” Because (defendant argues) there is no rational basis for this different treatment, the requirement under section 29550.1 that a criminal justice administration fee be imposed, irrespective of the defendant’s ability to pay it, violates equal protection.

Defendant asserts that the proper remedy here is to imply an ability-to-pay clause in section 29550.1. Under this approach, since the court made no finding of defendant’s ability to pay the booking fee, and there is no substantial evidence in the record upon which an implied court finding of ability to pay may rest, the booking fee cannot withstand attack. Defendant argues that the remedy under the circumstances is for this court to strike the fee from the judgment.

B. *Discussion of Equal Protection Challenge*

1. *Forfeiture of Challenge*

We consider as a threshold matter whether defendant’s equal protection claim has been forfeited because he failed to assert it below.⁶ We conclude that even were the constitutional claim forfeited—a finding we do not make here—we will address it on its merits as a question of law submitted on undisputed facts.

“ “No procedural principle is more familiar to this Court than that a constitutional right,” or a right of any other sort, “may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.” [Citation.]’ [Citation.]” (*People v. Saunders* (1993) 5 Cal.4th 580, 589-590, quoting *United States v. Olano* (1993) 507 U.S. 725, 731.) The

⁶ While “ ‘waiver’ ” is the term commonly used to describe a party’s loss of the right to assert an appellate challenge based upon the failure to raise an objection below, “ ‘forfeiture’ ” is the more technically accurate term. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. 2.)

purpose of the forfeiture doctrine “ ‘is to encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided and a fair trial had. . . .’ ” (*People v. Walker* (1991) 54 Cal.3d 1013, 1023.)

Our high court has applied the doctrine of forfeiture in a variety of contexts to bar claims not preserved in the trial court in which the appellant had asserted an abridgement of fundamental constitutional rights. (See, e.g., *People v. Williams* (1997) 16 Cal.4th 153, 250; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1116, fn. 20.) Courts in a number of instances have found that the appellant’s unpreserved equal protection claims, such as the one made by defendant here, were forfeited. (See, e.g., *People v. Alexander* (2010) 49 Cal.4th 846, 880, fn. 14; *People v. Burgener* (2003) 29 Cal.4th 833, 861, fn. 3.) The forfeiture doctrine generally applies to the area of sentencing. (*People v. Scott* (1994) 9 Cal.4th 331, 351; see also *People v. Welch* (1993) 5 Cal.4th 228, 237 [unpreserved challenge to reasonableness of probation conditions forfeited].)

Defendant did not raise any challenge below to the imposition of the criminal justice administration fee. This omission occurred notwithstanding the recommendation that a booking fee of \$129.75 payable to the City of Palo Alto “pursuant to Government Code [sections] 29550, 29550.1 and 29550.2” was made by the probation officer in the report available to the parties and considered by the court.

Defendant argues that his claim is not forfeited under the authority of *People v. Pacheco* (2010) 187 Cal.App.4th 1392 (*Pacheco*). In *Pacheco*, this court held that the defendant’s challenges to the court’s imposition of a booking fee under either sections 29550, subdivision (c) or 29550.2 (as well as a probation and attorney fees) were not forfeited, notwithstanding his failure to object to them at the trial court. (*Pacheco*, at p. 1397.) The defendant challenged the booking fee because the court did not make a determination that defendant had the ability to pay the fee and there was insufficient evidence to support such a determination. (*Ibid.*) Here, although defendant makes an equal protection challenge, his related arguments are that—because an ability-to-pay

requirement should be implied in section 29550.1 to save it from being unconstitutional—(1) the court was required to make a finding that defendant had the ability to pay the booking fee, and (2) there was no factual support for any such finding. Accordingly, we believe that *Pacheco*'s holding that unpreserved sufficiency-of-the-evidence challenges to a booking fee are cognizable offers support for defendant's position that he may assert his constitutional claim here.⁷

Even were we to conclude that *Pacheco* is distinguishable because the nature of defendant's challenge here is a constitutional one, we would nonetheless find it cognizable. We recently held that a similar equal protection challenge to section 29550.1 was not forfeited, reasoning: "Defendant's argument . . . is that the statute under which the booking fee was imposed is unconstitutional on its face unless a saving construction is supplied by reading it to require a finding of ability to pay. Such a challenge may be raised for the first time on appeal because the issue thus presented is 'one of law presented by undisputed facts in the record before us that does not require the scrutiny of individual circumstances, but instead requires the review of abstract and generalized legal concepts—a task that is suited to the role of an appellate court.'" (*People v. Delacy* (2011) 192 Cal.App.4th 1481, 1493, quoting *In re Sheena K.* (2007) 40 Cal.4th 875, 885; [citations].)" (*People v. Mason* (June 5, 2012, H036598) ___ Cal.App.4th ___ [2012 Lexis 653, *5-6] (*Mason*).)

Moreover, even were we to find that defendant forfeited his equal protection challenge, we nonetheless elect to decide it on the merits. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 887, fn. 7 [appellate courts may exercise their discretion to review otherwise forfeited claims, generally ones involving important constitutional issues or

⁷ We acknowledge that there is authority to the contrary, including *People v. Crittle* (2007) 154 Cal.App.4th 368, 371, and *People v. Hodges* (1999) 70 Cal.App.4th 1348, 1357 (cited by the Attorney General). But we decline to repudiate our holding in *Pacheco*.

substantial rights].) This is the approach we recently employed, stating: “Even if it appeared that appellant had otherwise failed to preserve his equal protection challenge for review, we would exercise our discretion to entertain it because it represents an issue which has been arising frequently but on which we find no published authority.” (*Mason, supra*, ___ Cal.App.4th ___ [2012 Lexis 653, *6].)⁸

2. *Merits of Constitutional Challenge*

There are two requirements for a successful equal protection challenge. First, there must be “ ‘a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.’ [Citations.]” (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1199, quoting *In re Eric J.* (1979) 25 Cal.3d 522, 530.) Secondly, the party asserting the claim must show that there is no rational relationship to a legitimate state purpose for the state’s having made a distinction between the two similarly situated groups. (*Hofsheier*, at pp. 1200-1201.)⁹ For the reasons we explained recently in *Mason*, defendant’s equal protection challenge to section 29550.1 fails because neither prerequisite is satisfied. (*Mason, supra*, ___ Cal.App.4th ___ [2012 Lexis 653, *6-15].)

With respect to the first—“similarly situated groups”—prerequisite, we recently held: “The statutory scheme at issue here provides for payment orders and probation conditions effecting the reimbursement of counties for at least part of their costs in

⁸ Because we reach the merits of defendant’s constitutional challenge, we need not address his argument that his trial counsel rendered ineffective assistance by failing to object to the court’s imposition of the booking fee.

⁹ “Of course, there are three potential standards by which to measure the challenged classifications under an equal protection analysis—strict scrutiny, rational basis, and an intermediate level of review applicable to gender classifications. (*Hofsheier, supra*, 37 Cal.4th at p. 1200.) However, legislation is usually subjected to a rational basis analysis (*ibid.*), . . .” (*People v. Cavallaro* (2009) 178 Cal.App.4th 103, 111, fn. 9.)

booking persons arrested by their own officers and the officers of other entities such as municipalities and the state. [Citations.] It classifies defendants according to the identity of the entity whose employees arrest them. Section 29550.1, which furnishes the authority for the fee imposed on defendant, applies to persons arrested by an officer or agent of a ‘city, special district, school district, community college district, college, university, or other local arresting agency.’ Section 29550, subdivision (d) (§ 29550(d)), applies to defendants arrested by officers of a county. Section 29550.2 applies to arrests by a ‘governmental entity not specified in Section 29550 or 29550.1,’ i.e., neither a ‘local arresting agency’ nor a county, . . . [¶] The three classes of prisoners thus created may be roughly characterized as local arrestees, county arrestees, and state arrestees.

Defendant’s challenge rests on the fact that on the face of the statutes, a local arrestee may be required to pay a booking fee without any showing that he is able to pay it, whereas state and county arrestees, or at least some of them, may only be subjected to such a fee if shown to possess such ability. [¶] . . . [¶] We have concluded that for purposes of the statutes challenged here, local arrestees are not ‘similarly situated’ to state and county arrestees. The lack of similarity arises from the fact that under section 29550.1, a local arrestee is only liable for the fee ‘imposed by a county.’ The quoted phrase is manifestly a reference to the charge described in section 29550, subdivision (a)(1) (§ 29550(a)(1)), which entitles a county to ‘impose a fee’ on a local arresting agency ‘for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee’ of that agency. The county may collect this charge simply by ‘submit[ting] an invoice’ to the arresting agency. (§ 29550(a)(1).) And it is this charge which is passed on to the local arrestee by section 29550.1. [¶] The statutes provide no comparable mechanism for reimbursing the county’s expenses when the arrest is not made by a local agency. When the county itself makes the arrest, it obviously cannot reimburse itself; it must recover its expenses from the arrestee, or not at all. Nor is any provision made for reimbursement of county

expenses when the arrest is made by the state or other unenumerated entity. . . . Thus, whereas sections 29550(d) and 29550.2 operate to reimburse a county for its own expenses, section 29550.1 operates to reimburse the arresting agency for sums it has already paid to, or at least been charged for by, the county. [¶] Of course it scarcely matters to the defendant whose account the proceeds go into. A difference of far greater significance to him is the amount he may be required to pay. And under the statutes as we read them, an arrest by a local agency has the automatic effect of cutting in half the arrestee’s potential liability for booking expenses. This is because section 29550.1 empowers a local arresting agency to recover only the fee ‘imposed by a county,’ i.e., imposed on the arresting agency pursuant to section 29550(a)(1), which limits the county’s recovery to ‘one-half’ of the county’s ‘actual administrative costs . . . incurred in booking or otherwise processing arrested persons.’ (§ 29550(a)(1), italics added.) This means that a local arrestee’s potential liability is exactly half what it would have been if he had been arrested by a state or county agency, i.e., the county’s ‘actual administrative costs . . . incurred in booking or otherwise processing arrested persons.’ (§ 29500, subd. (c) (§ 29500(c)), 29550.2.) [¶] All these statutes rest on the general premise that an arrestee, if convicted or placed on probation, should generally be obligated to absorb these costs. To that extent all arrestees are similarly situated. But beyond that point, a local arrestee’s situation differs from that of a state or county arrestee in two respects. First, part of his ‘debt’ to the county has been already been defrayed by someone else—the arresting agency—which, in relation to him, stands in something like the position of a guarantor or subrogee. Second, and far more critically, the debt has been cut in half. For these reasons, when a local arrestee stands before the court at sentencing, he is not situated similarly to state and county arrestees ‘ “for purposes of the law challenged.” ’ [Citation.]” (*Mason, supra*, ___ Cal.App.4th ___ [2012 Lexis 653, *6-13, fns. omitted.]

Defendant's equal protection challenge also fails because it does not meet the second prerequisite of the constitutional claim. As we explained: "Even if defendant could satisfy the 'similarly situated' test, the foregoing considerations would establish a rational basis for the differential treatment of which he complains. Section 29550.1 denies him a benefit granted to other arrestees, i.e., the possibility of avoiding an assessment because he lacks the ability to pay it. But in conjunction with section 29550(a)(1), it also grants him a benefit denied to other arrestees: in effect, automatic forgiveness of half of his debt. This arrangement grants advantages as well as disadvantages to two of the three principals: The county receives a sure source of reimbursement in exchange for writing off half its expenses; the defendant receives the benefit of the write-off but give up the opportunity to avoid all liability on grounds of inability to pay. Even the local agency receives the benefit of an evident compromise, i.e., it does not assume the county's whole burden but only half of it, and it is granted the right to reimbursement without having to prove the defendant's ability to pay. The Legislature could rationally conclude that this arrangement justifies withholding an ability-to-pay condition as to this class of arrestees because other arrestees are exposed to a potential debt of twice the size. A statutory classification 'must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. [Citations.] Where there are 'plausible reasons' for [the classification], 'our inquiry is at an end.'" ' [Citation.]" (*Mason, supra*, ___ Cal.App.4th ___ [2012 Lexis 653, *13-14, fns. omitted.]

For the foregoing reasons, we reject defendant's claim that the imposition of the booking fee under section 29550.1 violated his constitutional right to equal protection.

II. *Fine and Penalty Assessment Under Penal Code Section 1202.5*

A. *The \$10 Fine*

The court imposed a \$10 fine pursuant to Penal Code section 1202.5, subdivision (a).¹⁰ Defendant contends that the order imposing the fine must be stricken because there is no evidence in the record that he had the ability to pay the fine. We conclude that defendant has forfeited this challenge.

Where a statute requires the court to impose a fine and compels the consideration of the defendant's ability to pay it, the defendant must raise the issue in the trial court by objecting or demanding a hearing. This is especially the case when the probation report recommends the imposition of such a fine, as occurred in this instance. If the defendant fails to object or demand a hearing, he or she is barred from asserting it on appeal based upon principles of forfeiture. (*People v. McMahan* (1992) 3 Cal.App.4th 740, 749-750.) This precise conclusion was reached in rejecting a challenge to a fine imposed pursuant to Penal Code section 1202.5 in *Crittle, supra*, 154 Cal.App.4th 368. There, the court held: "Since defendant did not raise the issue in the trial court, we reject his contention that the fines must be reversed because the court did not make a finding of defendant's ability to pay them, and nothing in the record shows he had the ability to pay." (*Id.* at p. 371.)

¹⁰ "In any case in which a defendant is convicted of any of the offenses enumerated in [Penal Code] Section 211, 215, 459, 470, 484, 487, 488, or 594, the court shall order the defendant to pay a fine of ten dollars (\$10) in addition to any other penalty or fine imposed. If the court determines that the defendant has the ability to pay all or part of the fine, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any other fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution." (Pen. Code, § 1202.5, subd. (a).)

Defendant relies on *Pacheco, supra*, 187 Cal.App.4th 1392, in support of his contention that his claim is not forfeited. *Pacheco* is distinguishable and does not support his position. As noted, *Pacheco* concerned the defendant's ability-to-pay challenges to booking, probation, and attorney fees imposed by the court in connection with a grant of probation. In holding that the challenges were not forfeited notwithstanding the defendant's failure to assert them at the trial level, we relied on two attorney fees cases (*People v. Viray* (2005) 134 Cal.App.4th 1186, and *People v. Lopez* (2005) 129 Cal.App.4th 1508). (*Pacheco*, at p. 1397.) We also observed that the booking fee "must not exceed the actual administrative costs of booking" (*id.* at p. 1400); the probation fee must be based upon " 'the reasonable cost of any probation supervision,' " after referral of the defendant to the probation officer for inquiry into ability to pay and the defendant's receiving notice of the right to counsel and court a hearing (*id.* at pp. 1400-1401); and the attorney fee order, made after notice and hearing, is based upon reimbursement of " 'all or a portion of the cost' " of legal assistance provided to the defendant either through a public defender or private, court-appointed counsel (*id.* at p. 1398). We concluded that the record was devoid of evidence of the "actual administrative costs" relative to the booking fee (*id.* at p. 1400); the "statutory procedure" for determining or waiving the ability-to-pay requirement for probation fees was not followed; (*id.* at p. 1401), and (3) the "statutory directive" (*id.* at p. 1398) was not followed in connection with the attorney fee order (*id.* at p. 1399). We held further that neither a probation fee order (*id.* at p. 1401), nor an attorney fee order may be imposed as a condition of probation (*id.* at p. 1399).

Pacheco is readily distinguishable from the circumstances before us. The statute here mandates a definitive fee—"shall order . . . a fine of ten dollars" (Penal Code § 1202.5, subd. (a))—rather than an open-ended fee. Defendant was therefore on notice that the fine related to the carjacking conviction was in issue and that he should make an inability-to-pay objection. Conversely, where a fee is open-ended, the People necessarily

have an initial burden of proof and a defendant can necessarily rely on a failure of proof without having to object. Additionally, the imposition of the fees in *Pacheco* was erroneous on grounds independent of the existence of substantial evidence of the defendant's ability to pay them. No evidence supported the amount of the administrative fee and the statutory procedures for imposing the probation and attorney fees were not followed. Furthermore, the probation and attorney fees were assailable because the court imposed them as conditions of probation.

We conclude therefore that *Pacheco* is distinguishable and not controlling, and we hold that, under *Crittle, supra*, 154 Cal.App.4th at page 371, defendant forfeited his appellate challenge to the fine imposed pursuant to Penal Code section 1202.5, subdivision (a).

Defendant makes the argument that we should nonetheless consider his claim because trial counsel's failure to object to the fine constituted ineffective assistance. Defendant's ineffective assistance claim here fails because the record does not demonstrate the reason trial counsel did not object to the fine imposed under Penal Code section 1202.5, subdivision (a), and this is not a case where there could be no satisfactory explanation for such failure. (*People v. Wilson, supra*, 3 Cal.4th at p. 936.)

B. *The Penalty Assessment*

At sentencing, the court announced that it was imposing a "\$10 fine plus penalty assessment, 1202.5." This mirrored the recommendation of the probation officer in her report. The clerk's minutes include this fine and note a penalty assessment of \$30, and the abstract of judgment similarly reflects "Fine(s) \$10 + [\$]30 PA [penalty assessment] per 1202.5."

Defendant challenges separately the \$30 amount, arguing that the court acted improperly in making this "unspecified 'penalty assessment.'" He argues that the court was required to make an itemized breakdown of the penalty assessment. The Attorney General responds that the claim is forfeited and is in any event without merit.

As noted above, the forfeiture doctrine is applied generally “in the context of sentencing as in other areas of criminal law.” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 881.) Defendant was on notice that a penalty assessment, in addition to the \$10 fine, was recommended as part of the sentence in the probation officer’s report. (See *People v. Gonzalez*, *supra*, 31 Cal.4th at p. 754.) He could have readily objected to any claimed lack of specificity in the court’s order at the time it was orally pronounced. We conclude that defendant forfeited this challenge by failing to raise it below.

II. *The Abstract of Judgment*

The court imposed a concurrent 30-day jail sentence for the misdemeanor conviction of fleeing a pursuing peace officer’s motor vehicle (count 2). The clerk’s minutes properly reflect this portion of the sentence, but the abstract of judgment does not. Defendant contends that the abstract should be modified to address this omission. The Attorney General indicates that she has no objection to the request.

An abstract of judgment is intended to provide an accurate summary of the judgment. (*People v. Hong* (1998) 64 Cal.App.4th 1071, 1080.) The abstract, however, “is not the judgment of conviction; it does not control if different from the trial court’s oral judgment and may not add to or modify the judgment it purports to digest or summarize. [Citation.]” (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) An appeal will lie to correct an abstract of judgment that does not accurately reflect the oral judgment of the sentencing court. (*Ibid.*) Accordingly, we will direct the trial court to amend the abstract to properly reflect that defendant has been sentenced to a 30-day jail term for the count 2 conviction, said sentence to run concurrently with the three-year prison sentence imposed for the count 1 conviction.

DISPOSITION

The trial court is directed to prepare an amended abstract of judgment that specifies that defendant is sentenced to a 30-day jail term for the count 2 conviction, said

sentence to run concurrently with the three-year prison sentence imposed for the count 1 conviction. The judgment is affirmed.

Duffy, J.*

WE CONCUR:

Rushing, P.J.

Premo, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.