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

THE PEOPLE,

Plaintiff and Respondent,

v.

XUONG LUU,

Defendant and Appellant.

H038063

(Santa Clara County

Super. Ct. No. CC897137)

Pursuant to a negotiated disposition, Xuong Luu (defendant) pleaded guilty to one count of failing to update his sex offender registration within five working days of his birthday (Pen. Code, § 290.012, subd. (a)).

On February 3, 2012, the court sentenced defendant to a two-year state prison term to be served concurrently with a prison sentence that he was serving in a case in Sacramento County. The People stipulated that defendant would receive presentence custody credits at "half-time." Accordingly, the court awarded defendant 100 actual days of custody credits and 100 days of conduct credits. Defendant filed a timely notice of appeal and sought and was granted a certificate of probable cause.

Defendant's appointed counsel has filed an opening brief in which no issues are raised and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has declared that defendant was

notified that no issues were being raised by counsel on appeal and that an independent review under *Wende* was being requested.

On September 28, 2012, we notified defendant of his right to submit written argument on his own behalf within 30 days. That time has passed and we have not received a response from defendant.

Pursuant to *Wende, supra*, 25 Cal.3d 436, we have reviewed the entire record and have concluded there is no arguable issue on appeal. However, we do find that the court erred in considering defendant's ability to pay a court operations assessment (Pen. Code, § 1465.8) and a criminal conviction assessment (Gov. Code, § 70373).

Pursuant to *People v. Kelly* (2006) 40 Cal.4th 106, we provide "a brief description of the . . . procedural history of the case, the crimes of which the defendant was convicted, and the punishment imposed." (*Id.* at p. 110.)

Since appellant waived referral to the probation department, the record does not contain a statement of the underlying facts.

#### *Proceedings Below*

On February 28, 2008, defendant was charged by felony complaint with one count of failing to update his sex offender registration within five working days of his birthday (Pen. Code, § 290.012, subd. (a), count one) and one count of failing to inform a law enforcement agency of his new address (Pen. Code, § 290, subd. (f)(1)(A), count two).

On January 4, 2012, defendant initialed and signed an "ADVISEMENT OF RIGHTS, WAIVER, AND PLEA FORM."<sup>1</sup> At the January 4, 2012 hearing on defendant's change of plea, the court confirmed with defendant that he had gone over the

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<sup>1</sup> In the form, defendant was advised of his constitutional rights, the consequences of his pleas, including immigration consequences and the maximum term of imprisonment for the offenses to which he would be entering his pleas. Defendant waived his constitutional rights.

form with his attorney and that the initials and signature on the form were his.

Thereafter, defendant entered his guilty plea.

As noted on February 3, 2012, pursuant to the negotiated disposition, the court sentenced defendant to a two year concurrent prison term; the court dismissed count two in accordance with the negotiated disposition. However, the court found that defendant did not have the ability to pay a court operations assessment (Pen. Code, § 1465.8),<sup>2</sup> a criminal conviction assessment (Gov. Code, § 70373) or a criminal justice administration fee (Gov. Code, § 29550 et seq.)

#### *Discussion*

We find that the court erred in finding that defendant did not have the ability to pay a court operations assessment and a criminal conviction assessment that the probation officer recommended defendant pay. Penal Code section 1465.8, subdivision (a), requires the court to impose an assessment on every conviction "[t]o assist in funding court operations." Similarly, Government Code section 70373, subdivision (a)(1) requires the court to impose an assessment on every felony conviction "[t]o ensure and maintain adequate funding for court facilities." "Neither statute provides for considering a defendant's ability to pay . . . ." (*People v. Shiseop Kim* (2011) 193 Cal.App.4th 836, 842.)

As these are mandatory provisions that must be imposed and, as noted, there is no ability to pay requirement, we may correct the order on appeal in the first instance (*People v. Talibdeen* (2002) 27 Cal.4th 1151, 1157; *People v. Rodriguez* (2000) 80 Cal.App.4th 372, 374); we do not see any purpose in soliciting supplementary briefing

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<sup>2</sup> The assessment in Penal Code section 1465.8 was formerly known as a court security fee. However, as part of the 2011 Realignment legislation, the Legislature revised Penal Code section 1465.8 to provide that an "assessment" be imposed to "assist in funding court operations."

regarding this disposition. Should defendant claim to be aggrieved as a result, he may petition for rehearing. (Gov. Code, § 68081.)

*Disposition*

The judgment is modified to include a court operations assessment pursuant to Penal Code section 1465.8 and criminal conviction assessment pursuant to Government Code section 70373 as recommended in the probation officer's report in this case. As so modified the judgment is affirmed. The clerk of the court is directed to amend the abstract of judgment to reflect imposition of these assessments and forward a copy to the Department of Corrections and Rehabilitation.

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ELIA, Acting P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MÁRQUEZ, J.

