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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN BUSTAMANTE, JR.,

Defendant and Appellant.

H040060

(Santa Clara County

Super. Ct. No. CC950733)

Defendant John Bustamonte, Jr. appeals a judgment of conviction following his plea of no contest to lewd conduct with a child in violation of Penal Code section 288, subdivision (a),¹ and admitting that he had five prior convictions for the same conduct. (§ 667.5, subd. (b).) On appeal, defendant asserts the court erred in imposing a probation revocation fine.

STATEMENT OF THE CASE²

Defendant was charged by information in 2010 with three counts of lewd or lascivious acts on a child under the age of 14 (§ 288, subd. (a)). The information also alleged defendant had served five prison priors (§ 667.5, subd. (b)). Defendant pleaded

¹ All further statutory references are to the Penal Code.

² The underlying facts are omitted because they are not relevant to the issue on appeal.

no contest to one count of lewd or lascivious conduct and admitted all of the prison priors.

In February 2012, the court suspended imposition of sentence and placed defendant on probation for three years with credit for time served in custody to that date. The court also imposed a \$200 restitution fine pursuant to section 1202.4, and a \$200 probation revocation fine pursuant to section 1202.44, which it stayed. The minute order for the sentencing hearing reflected that the court imposed \$264 in fines pursuant to sections 1202.4 and 1202.44.

In July 2013, defendant admitted he violated probation and the court sentenced him to four years in state prison. The court also imposed fines, stating: “The previously imposed restitution fine will also be imposed. It’s \$265?” to which the probation officer responded, “\$240.”

Defendant filed a timely notice of appeal.

DISCUSSION

On appeal, defendant asserts the trial court erred in imposing a probation revocation fine higher than the originally imposed and stayed fine.

When the court originally placed defendant on probation in 2012, it orally imposed a restitution fine of \$200 pursuant to section 1202.4 and a probation revocation fine pursuant to section 1202.44 in the same amount. The minutes for the hearing as recorded by the clerk mistakenly stated that those fines were \$264. When there is a discrepancy between the oral record and the minute order, the oral pronouncement of sentence constitutes the judgment. (*People v. Scott* (2012) 203 Cal.App.4th 1303, 1324).

Because the oral record reflects that the trial court originally imposed a probation revocation fine in the amount of \$200, and stayed that amount, the same \$200 fine should have been imposed when defendant violated probation and was sent to prison. The

court's imposition of \$240 at the probation revocation hearing was error. The Attorney General concedes this point, and asks that the judgment be modified accordingly.

DISPOSITION

The probation revocation fine imposed on July 31, 2013 in the amount of \$264 is reduced to \$200 to reflect the fine originally imposed by the court. As modified, the judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.