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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. PRISCILLA BARRIENTOS, Defendant and Appellant.	H040767 (Santa Clara County Super. Ct. No. F1348924)

I. INTRODUCTION

Defendant Priscilla Barrientos pleaded no contest to automobile theft, a felony, and providing a false name to a peace officer, a misdemeanor. She admitted a prior conviction for possession of stolen property and was sentenced to 16 months in county jail. Counsel submitted a brief on behalf of defendant under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After our letter inviting defendant to submit any arguments on her own behalf was returned, we learned that counsel did not have a current address for defendant. Our clerk again contacted counsel and was informed that she still had no updated contact information. We deem the court's attempts to contact defendant sufficient.

Under *Wende*, we independently reviewed the entire record and found arguable issues regarding imposition of a mandatory restitution fine and a parole revocation restitution fine, and we asked the parties to file supplemental letter briefs addressing those issues. As explained below, we will modify and affirm the judgment.

II. FACTUAL AND PROCEDURAL SUMMARY

Defendant was charged by felony complaint with one count of taking a vehicle without consent (Veh. Code, § 10851, subd. (a); count one), one count of driving with a suspended license (Veh. Code, § 14601.1, subd. (a); count two), and one count of giving false information to a peace officer (Pen. Code, § 148.9[1]; count three). The complaint alleged that, on or between November 2 and November 3, 2013, defendant took and drove a Honda Odyssey without the owner's consent and with the intent to deprive the owner of title and possession of the vehicle, and that defendant drove on November 3, 2013 while her driving privilege was suspended or revoked. The complaint also alleged that on November 3, 2013 defendant provided a fictitious name to a peace officer in order to evade proper identification during a lawful detention and arrest. The complaint alleged that defendant had served a prior prison term for possessing stolen property. (§§ 496, subd. (a); 667.5, subd. (b).)

On December 10, 2013, defendant entered into a negotiated plea of no contest to counts 1 and 3, and she admitted the prior prison term. Defendant was sentenced on January 13, 2014. Consistent with the plea agreement, defendant received a 16-month county jail sentence on count one with a 90-day concurrent sentence on count three. The court dismissed count two and struck the additional punishment for the prison prior in the interest of justice. (§ 1385, subd. (c)(1).)

At the sentencing hearing, the court recommended revocation of defendant's driving privilege to the Department of Motor Vehicles (Veh. Code, § 13357), ordered defendant to submit buccal swab samples, finger prints, and blood specimens (§ 296), and ordered defendant not to own or possess any firearms or ammunition (§§ 29800, 30305). The court imposed a "general order of restitution," $80 in court operations assessments (§ 1465.8, subd. (a)(1)), $60 in conviction assessments (Gov. Code, § 70373), a $129.75

[1] Unspecified statutory references are to the Penal Code.

criminal justice administration fee (Gov. Code, § 29550.1), and a $4 emergency medical air transportation fee (Gov. Code, § 76000.10, subd. (c)(1)). The court ordered defendant to report to the Department of Revenue within 30 days from her release to complete a payment plan. No supervision was ordered upon defendant's release from jail. The court's minutes and abstract of judgment reflect a $280 restitution fine (§ 1202.4, subd. (b)(1)) and a $280 suspended parole revocation fine (§ 1202.45, subd. (a)), neither of which was included in the court's oral pronouncement.

III. DISCUSSION

A. MANDATORY RESTITUTION FUND FINE

Section 1202.4, subdivision (b) mandates a $280 minimum restitution fund fine for offenses committed in 2013. The trial court may increase that fine up to $10,000, but it must impose at least the minimum fine unless it finds "compelling and extraordinary reasons for not doing so and states those reasons on the record." (§ 1202.4, subds. (b), (c).) Although the court did not refer to imposing or not imposing the fine in its oral pronouncement, we read the record to show that the court intended to impose the mandatory fine.

The plea form, signed by the defendant and the court, contemplated a mandatory restitution fine. The following text appears next to defendant's initials on the plea form: "I understand the following fines and fees may be imposed: A general fund fine of up to $10,000 (plus 310% in penalty assessment); a *mandatory* restitution fine of not less than $240 [*sic*] and not more than $10,000 (plus a 10% county assessment); … ." (Italics added.) The probation report recommended that the court impose the mandatory minimum fine, and the report was followed in all other respects. Significantly, the court made no findings of compelling or extraordinary circumstances to waive the fine.

Given that the trial court was mandated by section 1202.4, subdivision (b) to impose a restitution fine and apparently intended to impose the minimum fine, in the interest of judicial economy we will modify the judgment to confirm imposition of the

fine. (See *People v. Morales* (2014) 224 Cal.App.4th 1587, 1594 [modifying judgment to include mandatory fine].) Our modification cures any error in the clerk's entry of this fine on the court's minutes and abstract of judgment.

B. SUSPENDED PAROLE REVOCATION FINE

The parole revocation restitution fine applies to any person whose sentence includes parole, post-release community supervision, or mandatory supervision. (Pen. Code, § 1202.45, subds. (a), (b).) None of those circumstances applies here. Consistent with the plea agreement, defendant received a "no tail" sentence such that she was not placed on parole or any type of post-release supervision. Unlike the mandatory fine discussed above, we find no support in the record that the court intended to impose an inapplicable parole revocation fine. We deem the clerk's parole revocation restitution fine entries on the court's minutes and abstract of judgment to be clerical error. (See *People v. Hong* (1998) 64 Cal.App.4th 1071, 1075.)

IV. DISPOSITION

The judgment is modified to reflect imposition of a $280 restitution fund fine under section 1202.4, subdivision (b). The trial court is directed to amend the court's minutes and abstract of judgment to strike the suspended section 1202.45, subdivision (a) parole revocation fine. As modified, the judgment is affirmed.

Grover, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.