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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. DENA MARIE FARIS, Defendant and Appellant.	F056329 (Super. Ct. No. CRF18797) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. Eric L. DuTemple, Judge.

Linda J. Zachritz, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Levy, Acting P.J., Cornell, J. and Dawson, J.

INTRODUCTION

Appellant, Dena Marie Faris, was charged on September 1, 2005, in a criminal complaint with driving under the influence of alcohol (Veh. Code, § 23152, subd. (a), count I), driving a vehicle with a blood-alcohol level greater than 0.08 percent (§ 23152, subd. (b), count II), and driving with a suspended driver's license (§ 14601.2, subd. (a), count III). Counts I and II alleged appellant had three prior drunk driving convictions within the meaning of sections 23550 and 23550.5. The complaint also alleged in counts I and II that appellant failed to complete a chemical test within the meaning of section 13577.

At the conclusion of the preliminary hearing on October 12, 2005, appellant was held to answer. The complaint was amended in open court, refiled, and deemed an information.[1] On December 19, 2005, appellant entered into a plea agreement in which she would admit counts I and III. Count II would be dismissed and appellant placed on probation for five years. Appellant would serve no more than 12 months in jail as a condition of probation, and her driver's license would be revoked for a minimum of three years.

The court established that appellant executed a felony advisement and waiver of rights form (plea waiver form) and that she was waiving her constitutional rights. The plea waiver form included a waiver of appellant's right to appeal. The prosecutor provided a factual basis for the plea and appellant pled guilty to driving under the influence of alcohol and driving with a suspended license. Count II was dismissed.[2]

On January 23, 2006, the trial court suspended imposition of sentence and placed appellant on probation for five years. The court ordered that appellant serve a jail term of

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[1]The amendments only concerned the dates of appellant's prior convictions for driving under the influence.

[2]Appellant also pled guilty in an unrelated action to driving with a suspended license and failing to provide proof of financial responsibility, an infraction (Veh. Code, § 16028, subd. (a)).

10 months and imposed a restitution fine of $1,000 pursuant to Penal Code sections 1202.4, subdivision (b), and 1202.44.

On September 10, 2008, appellant was convicted after a jury trial of driving under the influence of alcohol and driving with a blood-alcohol level of 0.08 percent or higher in case No. CRF26823. At the conclusion of the trial, the trial court found appellant in violation of the terms and conditions of her probation in the instant action.[3]

On October 7, 2008, the trial court sentenced appellant in the instant action to three years in prison for driving under the influence of alcohol and to a concurrent six-month sentence for driving with a suspended license. In case No. CRF26823, the court sentenced appellant to a consecutive term of eight months for driving under the influence of alcohol.[4] The court also imposed a restitution fine of $600 and ordered an additional fine to be imposed and suspended pending successful completion of parole.

Appellant contends, and respondent concedes, that the trial court erred in imposing a $600 restitution fine because it had already imposed a $1,000 restitution fine when it originally placed her on probation.[5]

DISCUSSION

The parties concur that the trial court erred when it imposed a new $600 restitution fine. The parties note the trial court should have imposed the original $1,000 restitution fine pursuant to Penal Code section 1202.44 because appellant's probation had been revoked. Respondent further argues the trial court must impose an identical $1,000 parole revocation fine pursuant to section 1202.45. We accept respondent's concession

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[3]The court found appellant in violation of her probation on March 28, 2008, for violating Penal Code section 415. On May 23, 2008, the court reinstated appellant's probation.

[4]In case No. CRF26823, the court stayed appellant's sentence for driving with a blood-alcohol level of 0.08 percent or higher and imposed a $200 restitution fine.

[5]Because the only issue on appeal concerns appellant's restitution fine, we do not recount the underlying facts of her conviction

and will vacate the trial court's $600 restitution order and will further order the trial court to impose a $1,000 parole revocation fine.[6]

Appellant's sole contention on appeal is that the trial court violated *People v. Chambers* (1998) 65 Cal.App.4th 819, 822 (*Chambers*) by imposing a different restitution fine than it originally ordered when it placed her on probation. The parties concur that Penal Code section 1202.44 mandates the imposition of the original $1,000 fine once the court revoked appellant's probation.[7]

In *Chambers*, the defendant entered a no contest plea to first degree burglary. The trial court granted probation and, as a condition of probation, imposed a $200 Penal Code section 1202.4, subdivision (b) restitution fine. The trial court later revoked probation and sentenced the defendant to state prison, while imposing a $500 restitution fine pursuant to the same section. (*Chambers*, *supra*, 65 Cal.App.4th at p. 821.) The court in *Chambers* determined that the $500 restitution fine was unauthorized, declaring that there was "no statutory authority justifying the second restitution fine because … the first restitution fine remained in force despite the revocation of probation." (*Id*. at p. 823; see also *People v. Arata* (2004) 118 Cal.App.4th 195, 201-203 [trial court erred when it imposed second $800 § 1202.4 restitution fine when it had already imposed $600 restitution fine at time defendant was granted probation; second restitution fine stricken from judgment]; *People v. Guiffre* (2008) 167 Cal.App.4th 430, 434-435 [imposition of

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[6]The parties agree that although appellant waived her right to appeal in the plea waiver form, her waiver does not include unforeseen future errors. (See *People v. Mumm* (2002) 98 Cal.App.4th 812, 815.) This rule would especially apply to a case like this in which the trial court changed its original restitution, suspended imposition of sentence, and ordered a different restitution fine at a sentencing hearing years later.

[7]Penal Code section 1202.44 provides: "In every case in which a person is convicted of a crime and a … sentence that includes a period of probation is imposed, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional probation revocation restitution fine in the same amount …. This additional probation revocation restitution fine shall become effective upon the revocation of probation … and shall not be waived or reduced by the court, absent compelling and extraordinary reasons stated on record.…"

previously stayed § 1202.44 probation revocation fine is mandatory upon revocation of probation with sentence to state prison].)

In this case, the trial court imposed a $1,000 restitution fine pursuant to Penal Code section 1202.4, subdivision (b) when appellant was granted probation. Following revocation of appellant's probation, the court, although not entirely clear from the record, either imposed an additional $600 restitution fine or mistakenly referred to the previous $1,000 restitution fine in the incorrect amount. The distinction is not important here. As was the case in *Chambers* and *Arata*, because the first $1,000 restitution fine survived the revocation of probation, the $600 restitution fine amount was unauthorized and must be stricken from the judgment. The section 1202.4, subdivision (b) restitution fine is $1,000 and no more. Pursuant to section 1202.44, the trial court must impose the $1,000 restitution fine in this case.

Finally, the probation and parole revocation fines imposed pursuant to Penal Code sections 1202.44 and 1202.45 must each reflect the amount of the section 1202.4 restitution fine.

DISPOSITION

The judgment of conviction is affirmed. Appellant's restitution fine in case No. CRF18797 is vacated and the matter is remanded for the trial court to impose a $1,000 restitution fine pursuant to Penal Code section 1202.44 and a $1,000 parole revocation fine pursuant to section 1202.45. The trial court is directed to amend the abstract of judgment accordingly and to forward a copy to the appropriate authorities.