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NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

THE PEOPLE, Plaintiff and Respondent, v. IVON BRADLEY METTLER, Defendant and Appellant.	C043725 (Super. Ct. Nos. CR017994, CR018071)

Defendant Ivon Bradley Mettler pleaded guilty to possession of methamphetamine for sale (Health & Saf. Code, § 11378) in case No. CR017994 in exchange for a stipulated term of three years. Defendant also pleaded guilty to possession of methamphetamine for sale (Health & Saf. Code, § 11378) and possession of marijuana for sale (Health & Saf. Code, § 11359) in case No. CR018071 in exchange for promised consecutive terms of eight months on each count. An additional count and enhancement were dismissed.

The trial court sentenced defendant as agreed. The court also awarded defendant nine days of custody credit and ordered

defendant to pay a $200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a parole revocation fine in the same amount (Pen. Code, § 1202.45), a criminal laboratory analysis fee including penalty assessments of $145 (Health & Saf. Code, § 11372.5), and a drug program fee including penalty assessments of $435 (Health & Saf. Code, § 11372.7).

Defendant appealed. We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

DISCUSSION

We note an error in the judgment. Defendant was fined $145 including penalty assessments for the criminal laboratory fee (Health & Saf. Code, § 11372.5) and $435 including penalty assessments for the drug program fee (Health & Saf. Code, § 11372.7). It appears from these figures that the $145 lab fee included a penalty surcharge of $10, assessed pursuant to Penal Code section 1465.7, and that the $435 drug program fee included a penalty surcharge of $30.

Penal Code section 1465.7 reads in part: "(a) A state surcharge of 20 percent shall be levied on the base fine used to

calculate the state penalty assessment as specified in subdivision (a) of Section 1464. [¶] (b) This surcharge shall be in addition to the state penalty assessed pursuant to Section 1464 of the Penal Code and may not be included in the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464." The Legislature enacted Penal Code section 1465.7 in 2002 as urgency legislation effective September 30, 2002. (Stats. 2002, ch. 1124, § 46.)

Penal Code section 1465.7 became effective after defendant committed the offenses for which he stands convicted, as it was alleged that defendant committed the offenses in September and December of 2001. Thus, imposition of the $10 state surcharge on the drug laboratory fee and the $30 state surcharge on the drug program fee violates state and federal constitutional protections against statutes that make the punishment for a crime more burdensome after its commission. (*People v. McVickers* (1992) 4 Cal.4th 81, 84; *People v. High* (2004) 119 Cal.App.4th 1192, 1195-1197.)

Because imposition of the state surcharges in this case constitutes an unauthorized sentence, we are authorized to correct the error now. (*People v. Smith* (2001) 24 Cal.4th 849, 854; *People v. Walkkein* (1993) 14 Cal.App.4th 1401, 1411.) In the interest of judicial economy, we do so without having requested supplemental briefing. A party claiming to be aggrieved by this procedure may petition for rehearing. (Gov. Code, § 68081.)

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to strike the $10 and $30 state surcharges attached to the fees imposed under Health and Safety Code sections 11372.5 and 11372.7. As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections.

BUTZ, J.

We concur:

RAYE, Acting P. J.

ROBIE, J.