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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

OANH VUTHI NGUYEN,

Defendant and Appellant.

A107961

(Marin County Super.  
Ct. No. SC133544A)

Defendant Oanh Nguyen contends on appeal that the clerk’s minutes and abstract of judgment reflect restitution fines not imposed by the trial court. We order the restitution fines stricken. As amended, we affirm the judgment.

**I. BACKGROUND**

Defendant was convicted of felony second degree burglary following a plea of guilty. (Pen. Code,<sup>1</sup> § 459.) She admitted having suffered five prior convictions. (§ 1203, subd. (e)(4).) In return for a plea with a *Harvey* waiver,<sup>2</sup> one other count and two prior prison term allegations were dismissed. The trial court sentenced her to the upper term of three years in state prison. At the sentencing hearing, the trial court did not impose a restitution fine.<sup>3</sup> However, the minute order of the sentencing hearing indicates that defendant was required to pay a \$600 restitution fine pursuant to section 1202.4, and

<sup>1</sup> All statutory references are to the Penal Code.

<sup>2</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

<sup>3</sup> Before accepting defendant’s guilty plea at a prior hearing, the trial court had advised defendant that she would be ordered to pay restitution.

an additional \$600 fine pursuant to section 1202.45, which was suspended unless defendant's parole was revoked. The abstract of judgment likewise indicates the trial court imposed a restitution fine of \$600 pursuant to section 1202.4, subdivision (b), and a suspended parole revocation fine pursuant to section 1202.45.

## II. DISCUSSION

Defendant's sole contention on appeal is that she is not subject to the fines because they were not imposed by the trial court at the sentencing hearing. The People concede that she is correct.

We conclude that the reporter's transcript prevails over the minute order and that the trial court failed to impose fines pursuant to sections 1202.4 and 1202.45. (See *People v. Martinez* (2002) 95 Cal.App.4th 581, 586-587.) That failure may not be corrected on appeal. (*People v. Tillman* (2000) 22 Cal.4th 300, 301-303.) The judgment must be modified to eliminate any reference to the restitution fines.

## III. DISPOSITION

The judgment is modified to delete any reference to fines pursuant to section 1202.4 or section 1202.45. The trial court is directed to amend the abstract of judgment accordingly and forward an amended abstract to the Department of Corrections. In all other respects, the judgment is affirmed.

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RIVERA, J.

We concur:

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KAY, P.J.

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REARDON, J.