

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT WILLIAM WILDER,

Defendant and Appellant.

A116669

**(Solano County
Super. Ct. Nos. FCR230510,
FCR226563, FCR213815)**

Appellant Robert William Wilder pled no contest to felony counts in three separate cases and was sentenced to state prison for an aggregate term of 14 years 4 months. He contends (1) the abstract of judgment must be amended to correctly reflect the restitution and parole revocation fines imposed at sentencing; and (2) the trial court violated his rights under *Cunningham v. California* (2007) 127 S.Ct. 856 (*Cunningham*) when it imposed consecutive sentences on some of the counts. We agree that the abstract must be amended, but reject the *Cunningham* argument and otherwise affirm the judgment.

BACKGROUND

In case number FCR213815, appellant was charged by information with possessing cocaine for sale (Health & Saf. Code, § 11351),¹ possessing methamphetamine for sale (§ 11378) and maintaining a place where narcotics were sold (§ 11366), along with a prior prison term allegation (Pen. Code, § 667.5, subd. (b)).

¹ Further statutory references are to the Health and Safety Code unless otherwise indicated.

After the court granted his motion to represent himself under *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*), appellant pled no contest to the possession counts and admitted the prison prior. The court imposed an aggregate term of five years eight months, but suspended execution of that sentence and placed appellant on probation. A \$200 restitution fine and a \$200 parole revocation fine were imposed under Penal Code sections 1202.4 and 1202.45, the later being suspended pending the successful completion of parole.

Appellant's probation in case number FCR213815 was revoked after he was charged with possessing methamphetamine (§ 11377, subd. (a)) and sexual battery (Pen. Code, § 243.4, subd. (e)(1)) in case number FCR226563, along with another prior prison term allegation. He pled no contest to the possession charge and admitted the prior prison term in exchange for a dismissal of the sexual battery count.

Before appellant could be sentenced in case number FCR226563, he was charged by information with new offenses in case number FCR230510: transporting methamphetamine (§ 11379, subd. (a)), possessing methamphetamine for sale (§ 11378), misdemeanor resisting arrest (Pen. Code, § 148, subd. (a)(1)), misdemeanor battery (Pen. Code, § 242) and misdemeanor driving with a suspended license (Veh. Code § 14601.1, subd. (a)). With respect to the felony transportation and possession counts, the information included enhancement allegations for a prior prison term (Pen. Code, § 667.5, subd. (b)), two prior drug convictions (§ 11370.2, subd. (c)), and committing the current offenses while on bail or own recognizance release (Pen. Code, § 12022.1).

After appellant's request to represent himself under *Faretta* was granted, he pled no contest to the charges in case number FCR230510 and admitted the enhancement allegations. The plea agreement specified that all three pending cases would be referred to the probation department for a report and recommendation and that the court would consider ordering a residential drug treatment program. After receiving the report, the court sentenced appellant to state prison for a term of 14 years 4 months on all three cases, calculated as follows: the three-year middle term for the transportation count in case number FCR230510, plus two years for the on-bail enhancement, one year for the

prior prison term enhancement, and three years each for the prior drug conviction enhancements; a consecutive eight-month term (1/3 the middle term) for the possession count in case number FCR226563; and consecutive terms of one year and eight months, respectively, for the possession for sale counts in case number FCR213815. The court set the restitution and parole revocation fines under Penal Code sections 1202.4 and 1202.45 at \$3,000 each.

DISCUSSION

Amount of Fines Listed on Abstract of Judgment

Penal Code section 1202.4, subdivision (b) requires a sentencing court to impose a restitution fine in an amount between \$200 and \$10,000. Penal Code section 1202.45 requires imposition of a separate fine in the same amount as the fine under section 1202.4, to be suspended pending the defendant's successful completion of parole. If the defendant is sentenced on separate cases at the same hearing, the trial court may impose the fines separately or together. (*People v. Enos* (2005) 128 Cal.App.4th 1046, 1049-1050.)

When the court sentenced appellant on all three of his cases, it stated, "Mr. Wilder, you are fined \$3,000 pursuant to section 1202.4 of the Penal Code, an additional \$3,000 pursuant to section 1202.45 of the Penal Code. That last fine is stayed pending your successful completion on parole." The court's language indicates it was imposing a single \$3,000 restitution fine and a single \$3,000 parole revocation fine in all three cases collectively, yet the abstract of judgment reflects that a \$3,000 restitution fine and a \$3,000 parole revocation fine were imposed on *each* case individually. As the People concede, the abstract must be amended to correctly reflect the court's pronouncement of judgment. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185-187.)

Appellant alternatively claims that the fines in case number FCR213815 must be limited to \$200 because the court set the fines at that amount when it granted probation at the initial sentencing in that case. (See *People v. Chambers* (1998) 65 Cal.App.4th 819, 822.) The People concede that a restitution fine previously imposed may not be increased following the revocation of probation (see *ibid.*), but correctly note that the

\$200 fines were in any event subsumed within the \$3,000 fines that were imposed on all three cases collectively.²

Cunningham Challenge to Consecutive Sentences

Appellant argues that the trial court violated his constitutional rights to a jury trial and proof of guilt beyond a reasonable doubt when it imposed consecutive sentences based on factors that were neither specifically admitted by him nor found true by a jury. (See *Cunningham, supra*, 127 S.Ct. 856.) Even if we assume this challenge survives appellant's no contest pleas, it lacks merit. Our Supreme Court has held that the imposition of consecutive sentences does not implicate a defendant's rights under *Cunningham (People v. Black (2007) 41 Cal.4th 799, 820-823)*, and we are bound by that decision. (*Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 455.*)

DISPOSITION

The superior court shall modify the abstract of judgment to reflect a single fine of \$3,000 under Penal Code section 1202.4 and a single fine of \$3,000 under Penal Code

² The court could have imposed the \$3,000 fines on the two other cases; therefore, the collective fines were not limited to the \$200 originally imposed in case number FCR213815. Appellant does not appear to argue otherwise.

section 1202.45, and shall forward a copy of the modified abstract to the Department of Corrections. The judgment is otherwise affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

GEMELLO, J.