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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ERIC JASON FLOYD, Defendant and Appellant.	A114159 (Lake County Super. Ct. No. CR908603)

This appeal from a guilty plea concerns the propriety of a $525 drug program fee imposed as part of appellant's sentence. We affirm.

I. BACKGROUND

By information filed in March 2006, the District Attorney of Lake County charged appellant Eric Jason Floyd with possession of oxycodone for sale (Health & Saf. Code,[1] § 11351, count 1) and possession of oxycodone (§ 11350, subd. (a), count 2). The information further alleged that appellant suffered two prior prison terms. Pursuant to a negotiated disposition, appellant pleaded guilty to the first count in return for dismissal of the remaining count and the enhancements. The court sentenced appellant to the midterm of three years in state prison and also imposed a $600 restitution fine; a suspended parole revocation fine of the same amount; a $175 laboratory analysis fee plus penalty assessment (§ 11372.5); a $525 drug program fee

[1] Unless otherwise noted, all statutory references are to the Health and Safety Code.

plus penalty assessment (§ 11372.7); and a $20 court security fee. This timely appeal followed.

II. DISCUSSION

In the process of taking appellant's plea, the court advised him that in addition to the restitution fine "you may also be ordered to make a fine payment in the sum of not to exceed ten thousand dollars, plus penalty assessments; you understand that?" Appellant acknowledged that he understood. Among other items the probation report recommended the lab and drug program fees (with penalties) and the court imposed the same without objection.

Appellant attacks the imposition of the drug program fine and penalty assessment pursuant to section 11372.7. He argues that these items were not part of the plea bargain and therefore the court had no authority to impose them.

Appellant relies on *People v. Walker* (1991) 54 Cal.3d 1013 (*Walker*).[2] There, the court imposed a restitution fine but did not advise the defendant of the possibility of such fine prior to his plea. The defendant did not object at sentencing. Because imposition of such a fine was recommended in the probation report, the Supreme Court deemed the failure to advise of this consequence waived by the defendant's failure to object at the sentencing hearing. (*Id.* at pp. 1022-1023.) However, the court concluded that imposition of the restitution fine violated the defendant's plea agreement and reversed with directions to modify the judgment by reducing the restitution fine to the $100 statutory minimum. (*Id*. at pp. 1029-1031.)

The salient facts of *Walker* are captured in *In re Moser* (1993) 6 Cal.4th 342, 356: "[T]he offense to which the defendant had agreed to plead guilty carried a potential seven-year sentence and a $10,000 punitive fine, but under the negotiated plea agreement the defendant was to receive a five-year term of imprisonment and no

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[2] We note that on August 24, 2005, the Supreme Court granted review in *People v. Crandell*, S134883 on the issue of whether imposition of a restitution fine under Penal Code section 1202.4, subdivision (b) violates a defendant's plea agreement if the fine was not an express term of the agreement.

punitive fine. At the subsequent sentencing hearing, the trial court imposed the agreed-upon five-year sentence but also a substantial ($5,000) restitution fine." The *Moser* court also explained: "In concluding that the imposition of such a substantial fine constituted a violation of the plea agreement in *Walker*, we implicitly found that the defendant in that case reasonably could have understood the negotiated plea agreement to signify that no substantial fine would be imposed." (*Ibid*.)

The parties negotiating a plea agreement are free to craft any lawful bargain they choose. (*People v. Buttram* (2003) 30 Cal.4th 773, 785.) *Walker* does not preclude criminal defendants from reaching whatever deal seems to be in their best interests, including a deal that leaves imposition of fines to the discretion of the sentencing court. (*People v. Dickerson* (2004) 122 Cal.App.4th 1374, 1384.) Here the record of the negotiated disposition is silent as to a drug program fine and penalty assessments. Certainly such silence does not constitute evidence of an agreement that no fine, or a minimum fine within a statutory range, would be imposed. Rather, we conclude it suggests an implicit agreement that the imposition and amount of any fines would be left to the discretion of the sentencing court. (See *People v. Sorenson* (2005) 125 Cal.App.4th 612, 619-620.)

Several factors support our conclusion that the matter of fines was left to the court's discretion. First, the main focus of the plea agreement was the amount of prison time. (See *People v. Knox* (2004) 123 Cal.App.4th 1453, 1460.) Second, the court advised, and appellant acknowledged, that he could be fined up to $10,000 plus penalty assessments. (See *id*. at p. 1461; *People v. Sorenson*, *supra*, 125 Cal.App.4th at pp. 616, 619.) Further, the probation report notified appellant that the probation officer was recommending specific fines and penalties, and appellant did not object at sentencing to these recommendations or the court's imposition of such fines. (See *People v. Dickerson*, *supra*, 122 Cal.App.4th at p. 1385.)

III. DISPOSITION

The imposition of the $525 drug program fee did not violate the terms of the negotiated disposition. Accordingly, the judgment is affirmed.

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Reardon, J.

We concur:

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Ruvolo, P.J.

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Sepulveda, J.