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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY HOWARD,

Defendant and Appellant.

H029743

(Santa Clara County  
Super. Ct. No. EE504589)

Defendant Timothy Howard agreed to plead guilty to second degree burglary and possession of a fictitious check and admit certain prior-conviction allegations in return for a total sentence of no more than 32 months. The bargain, as recited by the trial court at the change-of-plea hearing, did not mention the fines required by Penal Code sections 1202.4 (restitution-fund fine) and 1202.45 (parole-revocation fine).<sup>1</sup> However, at the same time as the hearing, defendant signed and initialed an advisement of rights, waiver, and plea form that did mention the fines. At sentencing, the court imposed the agreed-upon prison term and also imposed a restitution-fund fine of \$800 and a suspended parole-revocation fine in the same amount. On appeal, defendant contends that the trial court violated the plea bargain by imposing the fines and asks that we reduce the fines to the statutory minimum (\$200). We affirm the judgment.

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

## BACKGROUND

The following colloquy took place at the change-of-plea hearing.

“THE COURT: All right. We will go ahead. And this form, you read, signed, and understood everything on the form?”

“THE DEFENDANT: Yes, sir.

“THE COURT: Do you have any questions about it?”

“THE DEFENDANT: No, sir, Your Honor.

“THE COURT: Are these your initials and signature throughout the form?”

“THE DEFENDANT: Yes, sir, Your Honor.

“THE COURT: All right. I will order it filed and adopt the Court’s findings and orders as set forth on page seven of seven.”

The trial court then went on to explain: “So, you could get less than 32 months or you could get 32 months. There are no promises. At least you know you are limited how much it could be by pleading early.”

Provision 42 of the form signed by defendant states: “I understand that there will be a mandatory restitution fund fine of not less than \$200 nor more than \$10,000, and if I am being sentenced to State prison that there will be an additional equal amount imposed but stayed.” Defendant placed his initials next to provision 42.

At the sentencing hearing, the trial court sentenced defendant to 32 months and ordered the following consistent with the probation officer’s recommendation: “There’s a restitution fine of \$800 that is imposed under the formula permitted by Penal Code Section 1202.4[, subdivision] (b); and an additional restitution fine of an amount equal to that imposed under Penal Code Section 1202.4, but is suspended under Section 1202.45 of the Penal Code.” Defendant made no objection to the order.

## DISCUSSION

The statutory bases for the fines at issue are sections 1202.4 and 1202.45. Section 1202.4, subdivision (a)(3)(A) mandates judicial imposition of a restitution-fund fine

whenever a person is convicted of a crime. The trial court shall impose the fine “unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.” (§ 1202.4, subd. (c).) In the absence of extraordinary reasons, the minimum fine the court must impose is \$200. (*Id.* subd. (b)(1).) The court has discretion to impose a fine of up to \$10,000. (*Ibid.*) The general guideline is that the fine should be “commensurate with the seriousness of the offense.” (*Ibid.*) Section 1202.45 mandates an additional fine duplicating the amount of the restitution fine. This fine takes effect only if parole is revoked.

Relying on *People v. Walker* (1991) 54 Cal.3d 1013, defendant asserts that any restitution fine above the statutory minimum of \$200 violated his plea bargain because the terms of his plea bargain did not contain any reference to the fines.

We extensively reviewed the principles that govern plea bargains and restitution fines in *People v. Dickerson* (2004) 122 Cal.App.4th 1374, *People v. Knox* (2004) 123 Cal.App.4th 1453, and *People v. Sorenson* (2005) 125 Cal.App.4th 612. We need not repeat that discussion here.

As we explained in *Knox*, plea agreements have “contractual qualities.” (*People v. Knox, supra*, 123 Cal.App.4th at p. 1459; see also, e.g., *People v. Shelton* (2006) 37 Cal.4th 759, 767 [“plea agreement is a form of contract”].) Plea agreements also have “a constitutional dimension.” (*People v. Knox*, at p. 1459.) “A criminal defendant’s constitutional due process right is implicated by the failure to implement a plea bargain according to its terms.” (*Ibid.*) The question presented in this case concerns the contractual aspect of plea agreements: at issue here “is whether specific terms or consequences became part of the plea bargain.” (*Ibid.*)

Here, we conclude that the restitution fines did become part of defendant’s plea agreement. At the change of plea hearing, the court and the parties orally identified the agreed prison term as 32 months. But other aspects of the plea were reflected in the written waiver form and became part of the bargain as well. As relevant here, the

restitution fines of between \$200 and \$10,000 were reflected in provision 42 of the waiver form. Defendant entered his plea only after confirming his understanding of that form. This incorporated into the plea the terms set forth in the form.

Nor are we persuaded to a different conclusion by the fact that the court imposed an \$800 fine, four times the statutory minimum. As stated in *Knox*: “The fact that the precise amount of the fine was not specified prior to the entry of defendant’s plea does not change the analysis. To the contrary, it represents defendant’s implicit recognition that the amount of the fine will be left to the sentencing court’s discretion.” (*People v. Knox, supra*, 123 Cal.App.4th at p. 1461; see *People v. Dickerson, supra*, 122 Cal.App.4th at p. 1385.) As fully explained in this court’s recent cases, our conclusion does no violence to *Walker*. (See *People v. Sorenson, supra*, 125 Cal.App.4th at pp. 618-619; *People v. Knox, supra*, 123 Cal.App.4th at pp. 1461-1462; *People v. Dickerson, supra*, 122 Cal.App.4th at pp. 1384-1385.) We therefore reject defendant’s contrary contention.

Our conclusion is confirmed by the absence of objection to the recommendation in the probation report that restitution fines be imposed, coupled with the absence of objection when the trial court actually imposed the fines. We mention the lack of objection in this context not to show waiver but to demonstrate that no one in the trial court seemed to think that imposition of the fines violated the terms of the plea bargain.

DISPOSITION

The judgment is affirmed.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.