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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN ADRIAN THORESON,

Defendant and Appellant.

H029705

(Santa Clara County

Super. Ct. No. CC595160 &

CC300573)

Pursuant to a plea bargain, defendant Martin Adrian Thoreson was convicted of offenses involving possession of depictions of juvenile sexual conduct. He contends that a \$400 restitution fine violated the terms of the plea bargain, and that he is entitled to two more days conduct credit than the trial court allowed. Respondent concedes the second contention. The first, however, conflicts with settled authority from this court, and we reject it. We will direct a modification of the abstract of judgment but will otherwise affirm the judgment.

BACKGROUND

On January 3, 2003, defendant was charged with two counts of developing and duplicating matter depicting sexual conduct of a person under 18 (Pen. Code, § 311.3) and one count of possessing or controlling matter depicting sexual conduct of a person under 18 (Pen. Code, § 311.11). He pleaded guilty to all counts and was placed on

probation for five years. On June 17, 2005, defendant was charged with one count of possessing or controlling matter depicting sexual conduct of a person under 18. (Pen. Code, § 311.11.) This charge arose from the discovery, during a probation search of defendant's residence, of 50 DVDs containing depictions of juveniles engaged in sexual activity.

On October 20, 2005, defendant entered into a plea bargain under which he would plead no contest and receive a sentence of three years based upon a violation of probation in the earlier case, and two years in the later case, to be served concurrently. Prior to accepting his change of plea, the court advised him that among its consequences, he would "be ordered to pay a mandatory ten dollar fine, actual restitution to the victims. A restitution fund fine of not less than [\$]200, no more than \$10,000, with an equal amount imposed by [*sic*] suspended. A general fund fine not to exceed \$10,000. If you are given probation a \$207.55 booking fee to the agency that booked you but before you have to pay any of those I would refer you to the Department of Revenue and they would determine your ability to pay." Defendant affirmed that he understood these statements.

On December 13, 2005, the court sentenced defendant to three years in prison. In addition to other assessments, the court imposed a "[f]our hundred dollar restitution fund fine" and "an equal amount imposed by [*sic*] suspended." As pertinent here, the court allowed 343 days credit for time actually served and 168 days conduct credit under Penal Code section 4019.

Defendant filed this timely appeal.

DISCUSSION

I. Restitution Fund Fine

Defendant charges as error the trial court's imposition of a \$400 restitution fund fine. He argues that because his plea agreement did not provide for the imposition of any such fine, the court could not impose one in an amount greater than the statutory minimum, which is \$200. (Pen. Code, § 1202.4, subd. (b)(1).) He acknowledges that the

court told him such a fine might be imposed in an amount up to \$10,000, but he argues that such an admonition establishes only that he was adequately apprised of the potential legal consequences of his plea, not that such a fine was contemplated by his plea bargain.

This court has rejected substantially identical contentions in three published decisions. (*People v. Dickerson* (2004) 122 Cal.App.4th 1374, 1386; *People v. Sorenson* (2004) 125 Cal.App.4th 612, 618-620; *People v. Knox* (2004) 123 Cal.App.4th 1453, 1460-1461.) The probation report specified the amount ultimately adopted by the court, and defendant voiced no objection to the fine at any time prior to appeal. We follow our previous decisions and hold that imposition of such a fine under these circumstances cannot be overturned as a violation of his plea bargain.¹

II. Custody Credits

Defendant also contends that the court understated his conduct credits (Pen. Code, § 4019) by two days. The court allowed 343 days for days actually served. The statutory formula provides for the calculation of conduct credits by dividing this number by four, which yields 85.75; rounding down to the nearest whole number (85); and multiplying the result by two, which yields 170. (Pen. Code, § 4019.) The trial court allowed only 168 days. Respondent concedes the error.

¹ As defendant recognizes, the issue is pending before the Supreme Court. (*People v. Crandell*, review granted. Aug. 24, 2005, S134883.)

DISPOSITION

The trial court is directed to amend the abstract of judgment to allow 170 days conduct credit under Penal Code section 4019. The judgment is otherwise affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.