

No. S153881

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CUITLAHUAC TAHUA RIVERA,

Defendant and Appellant.

Colusa County Superior Court

Case No. CR 46819

Hon. S. William Abel, Judge

Automatic Appeal From A Judgment
and Sentence of Death

Appellant's Supplemental Opening Brief

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By Appointment of the Court of Appeal
Independent Case System

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Argument

Both the restitution fine imposed pursuant to Penal Code section 1202.4, subdivision (b) and the parole revocation fine imposed pursuant to section 1202.45, subdivision (a) must be reduced to the statutory maximum of \$10,000.

The trial court imposed fines pursuant to Penal Code sections 1202.4, subdivision (b) and 1202.45, subdivision (a) in the amount of \$23,600 each, and stayed the section 1202.45, subdivision (a) parole revocation fine. (RT 14:3060; CT 49:14004, 14008.) The fines are unauthorized as they exceed the statutory maximum, and thus must be reduced to the statutory maximum of \$10,000 each.

A claim that a sentence is unauthorized is reviewed on appeal despite lack of objection in the trial court. (*People v. Smith* (2001) 24 Cal.4th 849, 852; *People v. Scott* (1994) 9 Cal.4th 331, 354.) “[A] sentence is generally ‘unauthorized’ where it could not lawfully be imposed under any circumstance in the particular case.” (*Id.* at p. 354.) Unauthorized sentences, or sentences entered in excess of jurisdiction, present pure questions of law and are correctable regardless of the factual findings below. (*People v. Smith, supra*, 24 Cal.4th at p. 852.) A trial court’s imposition of a restitution fine in excess of the maximum amount allowed by the applicable statute is an unauthorized sentence. (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1534.)

At appellant’s sentencing hearing, the trial court read and considered the probation officer’s report, which recommended that the court impose a restitution

fine of \$56,000 pursuant to section 1202.4, subdivision (b) and an equal parole revocation fine pursuant to section 1202.45, subdivision (a). (RT 14:3056, 3060; CT 49:13932.) When sentencing appellant, the trial court stated that it calculated each fine based on “\$200 per year.” (RT 14:3060.)

At the time of trial, Penal Code former section 1202.4, enacted in 1995, (section 1202.4) required the court to impose a restitution fine of not less than \$200 and not more than \$10,000 if the defendant was convicted of a felony. (Pen. Code, § 1202.4, subd. (b) [authorizing the imposition of a restitution fine of “not more than ten thousand dollars (\$10,000)”].) The statutory scheme also authorized a parole revocation fine in an equal amount. (Pen. Code, § 1202.45, subd. (a) [mandating, in every case in which a defendant’s sentence includes a period of parole, the assessment of a parole revocation fine “in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4”].)

When a trial court imposes restitution and parole revocation fines in excess of the statutory maximum, the proper remedy is to modify the judgment to reduce the fines to their statutory maximum. (See *People v. Blackburn*, *supra*, 72 Cal.App.4th at p. 1524; see also *People v. Smith*, *supra*, 24 Cal.4th at p. 853 [“the Court of Appeal may correct the erroneous amount of the parole revocation fine in this case”].)

Conclusion

The judgment should be ordered modified to reduce the restitution fine imposed pursuant to Penal Code section 1202.4, subdivision (b) and the parole revocation fine imposed pursuant to section 1202.45, subdivision (a) from \$23,600 to \$10,000.

Respectfully submitted,

/s/ Stephen M. Lathrop
Stephen M. Lathrop

Attorney for Defendant/Appellant
Cuitlahuac Tahua Rivera

Certificate of Compliance

I certify that this brief contains 505 words.

/s/ Stephen M. Lathrop
Stephen M. Lathrop

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I, Stephen M. Lathrop, declare, that I am over the age of 18 years, not a party to the case, and am a member of the California State Bar. My electronic service address is lathrop126813@gmail.com. My business address is 904 Silver Spur Road #430, Rolling Hills Estates, CA 90274. I am familiar with the business practice for collecting and processing electronic and physical correspondence.

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