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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR CORBETT,

Defendant and Appellant.

A132312

(San Francisco County
Super. Ct. No. 211554)

The sole issue on appeal pertains to an apparent error in the calculation of defendant Victor Corbett's presentence custody credits. Corbett appeals, claiming he is entitled to a 105-day reduction in his period of parole, due to the erroneous calculation of his presentence custody credits. The Attorney General concedes the error in the calculation of appellant's credits and suggests the matter be remanded to the trial court for the purpose of determining the concomitant reduction in appellant's period of parole. We agree and remand on this limited issue.

I. BACKGROUND

A jury convicted Victor Corbett of evading a peace officer (Veh. Code, § 2800.2, subd. (a)), misdemeanor reckless driving (Veh. Code, § 23103, subd. (a)), and two counts of misdemeanor resisting a peace officer (Pen. Code,¹ § 148, subd. (a)(1)). After the trial

¹ All further undesignated statutory references are to the Penal Code.

court declared a mistrial regarding three counts² on which the jury was unable to reach a verdict, the parties entered a negotiated disposition, in which appellant pleaded guilty to one count of misdemeanor assault (§ 240) in exchange for the dismissal of the remaining counts. The trial court sentenced appellant to the upper term of three years for evading a police officer, and ordered sentence on all other counts to run concurrently. The court awarded appellant 415 days of credit for time served in presentence custody, 206 days of “Sage”³ credit, and 68 days for time spent in the state hospital⁴ for a total of 689 days of credit.

On January 17, 2012, the trial court corrected the credit calculation to provide 209 additional days of conduct credit pursuant to section 4019.⁵ Although the amended abstract included a handwritten note that appellant was also to receive 68 days credit for his stay at the state hospital, this amount is excluded from the total credit amount. Rather, the amended abstract reflects a total of 830 days of credit, representing 415 days of actual custody credits and 415 days of conduct credits.

This timely appeal followed.

II. DISCUSSION

Appellant contends that the January 17, 2012 abstract of judgment incorrectly reflects his total credits because it fails to account for the time he spent at the state hospital. The Attorney General concedes this error, and agrees with appellant that the abstract of judgment should make clear that appellant was entitled to 415 days credit for time actually served, 415 days of conduct credit under section 4019, *and* 68 days for time

² The jury was unable to reach a verdict as to the following: 1) assault on a peace officer by force resulting in great bodily injury (§§ 245, subd. (c) & 12022.7, subd. (a)); 2) assault on a peace officer with a deadly weapon (vehicle) (§ 245, subd. (c)); and 3) battery with serious bodily injury (§ 243, subd. (d)).

³ *People v. Sage* (1980) 26 Cal.3d 498, 504.

⁴ After an initial determination that appellant was not competent to stand trial, appellant was committed to Napa State Hospital.

⁵ Appellant states that he obtained the additional credits as a result of “a letter from appellate counsel.” That letter, however, is not included in the record on appeal.

spent in the state hospital, for a total of 898 days. (See *People v. Guillen* (1994) 25 Cal.App.4th 756, 764 [computational error in presentence credits results in unauthorized sentence and subject to correction by trial court or appellate court].) As the record makes clear, the January 17, 2012 abstract of judgment must be amended to reflect the correct credit amount of 898 days.

Appellant next contends that his period of parole should be shortened by 105 days. To the extent appellant spent extra days in custody beyond his prison sentence because of the miscalculation of credits, he is entitled to a concomitant reduction in his period of parole. (*In re Ballard* (1981) 115 Cal.App.3d 647, 648-649; see also *In re Reina* (1985) 171 Cal.App.3d 638, 642.) The Attorney General concedes that appellant is entitled to a reduction in his parole period due to the miscalculation of credits, but asserts that the actual number days by which appellant's parole period should be reduced is unclear and, thus, the matter should be remanded for resolution in the trial court. We agree that remand is appropriate.

Appellant was sentenced to prison for three years on May 11, 2011. At that time, the court calculated appellant's credits at 689 days. As discussed, appellant was actually entitled to 898 days of custody credits. Appellant asserts that if the custody credits had been accurately awarded he *should* have been released from prison on August 17, 2011. He maintains that he spent 105 more days in prison than he should have and, thus, his period of parole should be reduced by 105 days. However, as noted by the Attorney General, appellant's calculation of this number is not entirely clear.⁶ For example, appellant does not state nor does the record reflect what day he *actually* was released from prison. Moreover, appellant contends that the trial court erred in referring to the term of parole as being 48 months, because the actual term of parole for his offense is 36 months. (See, e.g., § 3000, subd. (b)(1).) Because of the uncertainty in the record on

⁶ Appellant argues that “[i]f the custody credits had been accurately awarded, he would have served his entire sentence by August 17, 2011 [365 days x 3 = 1,095 – 898 = 197 divided by 2 = 98 days from May 11, 2011]. Since Corbett was shorted 209 custody credits, he served more than 105 days in prison than he should have.”

appeal as to the date on which appellant was released from prison, and precisely how many days by which appellant's parole period should be reduced, it is appropriate to remand the matter to the trial court to make these determinations.

III. DISPOSITION

The matter is remanded to the trial court with instructions to recalculate appellant's presentence conduct credits in a manner consistent with this opinion. The trial court shall reduce appellant's parole term by the number of days his properly calculated presentence custody and conduct credits exceed the three-year prison term to which he was sentenced. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver it to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

Sepulveda, J.*

We concur:

Ruvolo, P. J.

Rivera, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division 4, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.