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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRY RAY HAWES,

Defendant and Appellant.

A134359

(Marin County
Super. Ct. No. 143294A)

In defendant Terry Ray Hawes’s prior appeal¹ we reversed and remanded the matter to the trial court for resentencing and correction of the abstract of judgment. On remand, the court resentenced defendant to a total term of 27 years eight months to life in state prison. However, the court failed to calculate and credit defendant with time served in the California Department of Corrections and Rehabilitation (CDCR) between his original sentencing date and the resentencing date. Defendant timely appeals, citing the court’s oversight as error, and the Attorney General agrees.

We accept the Attorney General’s concession. “[W]hen a prison term already in progress is modified as the result of an appellate sentence remand, the sentencing court must recalculate and credit against the modified sentence *all actual time* the defendant has already served, whether in jail or prison, and whether before or since he was originally committed and delivered to prison custody.” (*People v. Buckhalter* (2001) 26 Cal.4th 20, 29.) Since the duty to calculate credits lies with the sentencing court (*id.* at

¹ We take judicial notice of our prior unpublished opinion in *People v. Hawes*, A127151, filed September 29, 2011. (Evid. Code, § 452, subd. (d).)

pp. 23, 29, 41), the proper remedy is to remand to the sentencing court with directions to calculate defendant's time spent in custody between his original sentencing and his resentencing, and to amend the abstracts of judgment accordingly.

DISPOSITION

The judgment is reversed and matter is remanded to the trial court. The court shall calculate defendant's time spent in custody between his original sentencing and his resentencing, amend the determinate and indeterminate abstracts of judgment to reflect that credit, and transmit the amended abstracts to the CDCR.

Marchiano, P.J.

We concur:

Dondero, J.

Banke, J.