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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.

THOMAS PLOWRIGHT, III,

Defendant and Appellant.

A136372

(Mendocino County
Super. Ct. No. SC-UK-CR-CR-10-
0012131-002)

Defendant pleaded guilty to charges in Mendocino County. Prior to the plea, his probation in Santa Clara County had been revoked on several grounds, including the conduct underlying the various offenses charged in Mendocino County. After he was sentenced to prison on the probation revocation, defendant was transferred to the custody of Mendocino County, served the remainder of his Santa Clara sentence, and was released. Only then did he plead guilty to certain of the Mendocino County charges. At sentencing, defendant sought and was denied custody credits for the time served in Mendocino County following his probation revocation. We affirm the denial of credits.

I. BACKGROUND

On May 10, 2010, defendant was charged with nine counts of drug and arms offenses in a complaint filed in Mendocino County. An amended complaint, filed in

July, expanded this to 17 counts, adding several charges of receiving and possessing stolen property.¹

Defendant was held in Mendocino County until May 15, when he was released on bail. Three days later, he was arrested at his home in San Jose for violating terms of his Santa Clara County probation. The petition for modification of defendant's terms of probation listed six "circumstances of violation." They included the new crimes alleged in the Mendocino County complaint, two misdemeanor Fish and Game Code violations that, although allegedly committed at the same time and place as the conduct underlying the Mendocino County charges, were not charged in the original or amended complaints, two positive tests for amphetamine, and the failure to pay fines and fees. Defendant admitted the violations; his probation was terminated; and he was sentenced to a two-year prison term.

On July 27, 2010, the Mendocino County Superior Court issued an order directing the sheriff to transport defendant from "his current place of incarceration—San Quentin State Prison—to the Mendocino County Jail" to stand trial in connection with the Mendocino County charges. Defendant was in the custody of Mendocino County no later than August 19, 2010. There he served the prison sentence imposed in Santa Clara County and was released on bail upon its expiration in May 2011. On January 26, 2012, he pleaded guilty to 3 counts of the 17 counts charged in the Mendocino County case and admitted certain enhancement allegations. The agreed upon sentence was 44 months.

Prior to sentencing, defendant filed a "Request for Custody Credits and Extended Stay on Remand," arguing he should be granted custody credit against the sentence imposed on the Mendocino County charges for the time spent serving his Santa Clara County prison sentence. As authority, the request cited Penal Code² sections 1381 and 2900.5.

¹ We do not specify the exact nature of the criminal charges because it is unnecessary to resolve the issue raised by defendant on appeal.

² All statutory references are to the Penal Code.

The trial court adopted the stipulated sentence of 44 months, but it declined to grant the requested custody credits under either statute. As to the request for custody credits under section 2900.5, the court explained, “[T]he fact that there were other reasons . . . he was revoked in Santa Clara than the charge here is sort of the end of that analysis for me.”

II. DISCUSSION

Defendant contends the trial court erred in declining to award custody credits under either section 1381 or section 2900.5.

A. *Section 1381*

Section 1381 permits a person to serve a demand for a prompt trial when he or she is charged in a criminal proceeding while imprisoned on a different charge. If the person is not brought to trial in that proceeding within the time period specified by the statute, the new charges can be dismissed. A purpose of section 1381 “is to allow a defendant who is serving a sentence of imprisonment to obtain the benefit of concurrent sentencing by accelerating the resolution of pending charges.” (*People v. Eldridge* (1997) 52 Cal.App.4th 91, 95.)

The text of section 1381 addresses only an incarcerated defendant’s entitlement to a prompt trial, without mentioning the possibility of custody credit. Defendant cites no authority for his contention the trial court had the discretion to grant custody credits under section 1381, and we have found none. On the contrary, the sole decision addressing the issue, *People v. Gisbert* (2012) 205 Cal.App.4th 277 (*Gisbert*), rejects such a possibility.

While imprisoned, the defendant in *Gisbert* was charged with a new felony and served a section 1381 demand. On the day he appeared for arraignment on the new charges, he pleaded guilty and was given a sentence to be served concurrently with his existing sentence. With respect to the new sentence, the defendant was initially granted custody credit for the period between the service of his section 1381 demand and his sentencing, but the trial court later vacated the credits. (*Gisbert, supra*, 205 Cal.App.4th at pp. 279–280.) In affirming the trial court’s decision to vacate the credits, the Court of

Appeal held that section 1381 did not provide a basis for the award of custody credits independent of the standard applied under section 2900.5: “A defendant is not entitled to presentence custody credits when he or she is charged with a crime while already incarcerated and serving a sentence on a separate, earlier crime. [Citations.] The test is whether the defendant would have been free ‘but for’ his or her incarceration on the second crime. ‘[W]hen presentence custody may be concurrently attributable to two or more unrelated acts, and where the defendant has already received credit for such custody in another proceeding, the strict causation rules of [*In re Joyner* (1989) 48 Cal.3d 487] should apply. . . .’ [Citation.] [¶] We conclude the trial court did not have discretion to award presentence custody credits for the period after defendant filed his section 1381 notice and demand for trial, because he would not have been free from custody but for being held for trial on the second burglary charge.” (*Gisbert*, at pp. 281–282.) *Gisbert* is controlling here and requires us to reject defendant’s contention he should have been granted custody credits under section 1381.

B. Section 2900.5

We also find no error in the trial court’s refusal to grant custody credits under section 2900.5 for the time served by defendant on the probation revocation sentence.

Under section 2900.5, a defendant is entitled to custody credit against a sentence when the “custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted.” (*Id.*, subd. (b).) This has been interpreted to require a defendant claiming custody credit to demonstrate “the conduct which led to his conviction was the sole reason for his loss of liberty during the presentence period.” (*People v. Bruner* (1995) 9 Cal.4th 1178, 1191 (*Bruner*).)

Bruner is directly on point here. In that case, a warrant was issued for the defendant’s parole violation on three grounds, including absconding from parole supervision, theft, and a positive cocaine test. When he was searched, the police found cocaine, and he later charged with possession. (*Bruner, supra*, 9 Cal.4th at p. 1181.) The defendant was sentenced to prison as a result of the parole violation, which was based on the three grounds cited above, as well as his possession of cocaine. (*Ibid.*) When the

defendant later pleaded guilty to possession of cocaine, the trial court refused to grant custody credit for the time he served for the parole violation. (*Id.* at pp. 1181–1182.) The Supreme Court affirmed the denial, holding “where a period of presentence custody stems from multiple, unrelated incidents of misconduct, such custody may not be credited against a subsequent formal term of incarceration if the prisoner has not shown that the conduct which underlies the term to be credited was also a ‘but for’ cause of the earlier restraint. Accordingly, when one seeks credit upon a criminal sentence for presentence time already served and credited on a parole or probation revocation term, he cannot prevail simply by demonstrating that the misconduct which led to his conviction and sentence was ‘a’ basis for the revocation matter as well.” (*Bruner, supra*, 9 Cal.4th at pp. 1193–1194.) Instead, as noted above, the defendant must show the misconduct was the “sole reason” for the revocation. (*Id.* at p. 1191; see similarly *People v. Stump* (2009) 173 Cal.App.4th 1264, 1272–1273.)

The petition for modification of defendant’s terms of probation alleged he had violated his probation not only by committing the various offenses charged in the Mendocino County complaint but also by committing two Fish and Game Code violations, testing positive for amphetamine, and failing to pay fines and fees. Defendant admitted the violations. Because those additional grounds were not part of the conduct charged in the Mendocino County case, defendant was not entitled to custody credits unless he could show the additional grounds had been dismissed as a basis for revoking his probation, leaving only the conduct underlying his conviction. (See *People v. Kennedy* (2012) 209 Cal.App.4th 385, 392.) He has made no such showing.

Defendant argues that because the failed drug tests occurred several months before he was detained for violation of his probation, they should, in effect, be disregarded as a basis for the revocation. While the timing of events certainly suggests defendant’s crimes in Mendocino County were the immediate spur to the revocation of his probation, there is no basis in the law for disregarding an otherwise legitimate ground for revocation merely because it was not the “law straw” that caused the probation office to seek revocation. Each of the grounds specified above constituted an independent basis for revoking

defendant's probation. Because certain of those grounds were not the conduct charged in the Mendocino County case, under the rationale of *Bruner* he was not entitled to custody credits.

III. DISPOSITION

The judgment of the trial court is affirmed.

Margulies, Acting P.J.

We concur:

Banke, J.

Sepulveda, J.*

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