

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re J.M., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.M.,

Defendant and Appellant.

A136557

(Contra Costa County  
Super. Ct. No. J1100422)

J.M. (appellant) appeals from the juvenile court’s dispositional order committing him to the Youth Offender Treatment Program. His sole contention is that he should have been awarded two more days of predisposition custody credit. The Attorney General (respondent) concedes the issue, and we agree appellant is entitled to two additional days of custody credit.

**FACTUAL AND PROCEDURAL BACKGROUND**

Because the only issue on appeal relates to custody credit, we discuss the facts and procedures of the case in a summary fashion.

A juvenile wardship petition was filed on March 14, 2011, alleging appellant actively and unlawfully participated in a criminal street gang (Pen. Code, § 186.22, subd. (a),<sup>1</sup> count one), discharged a firearm with gross negligence (§ 246.3, subd. (b)(1), count two), and was a minor in possession of a firearm (former § 12101, subd. (a),

<sup>1</sup> All further references are to the Penal Code unless otherwise stated.

count three). The petition also alleged a gang enhancement as to count two. The petition was based on an incident in which officers responded to a report of gun fire at a high school. Officers tried to stop four minors who ran from the scene and observed one of them—appellant—taking a knife “from his clothing” and discarding it. The officers apprehended appellant, who admitted he was an “LTS” (Little Town Sureno) gang member and that he took his handgun from his pants pocket and fired it three times after seeing rival gang members “ ‘flashing’ ” gang signs.

On March 22, 2011, appellant admitted felony possession of a firearm by a minor and misdemeanor participation in a criminal gang. The juvenile court adjudged appellant a ward of the court, ordered him sent to an out-of-home placement, imposed standard and gang-related probation conditions, and ordered him to register as a member of a street gang. Appellant was placed in the Courage to Change treatment program on May 31, 2011, but was terminated from the program on June 16, 2011 for fighting and failing to abide by the program’s rules.

A notice of probation violation under Welfare and Institutions Code section 777 (section 777 notice) was filed on June 28, 2011. Appellant admitted the violation and the juvenile court continued its previous placement order. Appellant was accepted into the Lifeworks program on September 8, 2011. A second section 777 notice was filed on September 23, 2011, alleging that appellant possessed a marijuana pipe and that the program director of Lifeworks saw appellant write gang-related graffiti on a school fence. Appellant admitted the violation and the court continued the placement order. On January 10, 2012, the probation officer notified the court that all of the appropriate treatment programs had refused to accept appellant.

On February 6, 2012, a third section 777 notice was filed. The next day, a petition was filed seeking modification of the previous placement order on the ground that appellant had been terminated from his previous placements and there was no program willing to accept him. Appellant admitted the probation violation.

On August 13, 2012, after a two-day contested dispositional hearing, the juvenile court set aside its previous placement order and committed appellant to the Youth

Offender Treatment Program, the county's institution program, for up to a maximum confinement time of three years four months. The court awarded appellant 491 days of custody credit.

### DISCUSSION

A juvenile court is required to calculate and give credit for the number of predisposition days in custody, including juvenile hall. (*In re Eric J.* (1979) 25 Cal.3d 522, 535-536.) It is settled that a partial day in custody, including the date of arrest or the date of sentencing, is treated as a whole day for custody credit purposes. (*People v. Smith* (1989) 211 Cal.App.3d 523, 526 [“Since section 2900.5 speaks in terms of ‘days’ instead of ‘hours,’ it is presumed the Legislature intended to treat any partial day as a whole day”]; *In re Marquez* (2003) 30 Cal.4th 14, 25-26.)

Appellant contends he should have been awarded 493—rather than 491—days of custody credit. Respondent concedes the issue.<sup>2</sup> The record shows that appellant was arrested on March 10, 2011, and remained in juvenile hall until being placed in the Courage to Change treatment program on May 31, 2011, i.e., 83 days including the date of arrest. Appellant was terminated from the Courage to Change program on June 16, 2011, and was subsequently placed in another program, Lifeworks, on September 8, 2011, i.e., 85 days including the date he was terminated from the Courage to Change program and the date he was placed in the Lifeworks program. Finally, appellant was removed from the Lifeworks program and detained in Mendocino County Juvenile Hall on September 24, 2011, and remained in custody in juvenile hall in Mendocino, then in Contra Costa, until disposition on August 13, 2012, i.e., 325 days including the date he was detained in juvenile hall and the date of the dispositional hearing. Based on the above, appellant was entitled to credit for a total of 493 days, not 491 days. He therefore should be credited with two additional days of custody credit.

---

<sup>2</sup> Respondent acknowledges there is a rule requiring a partial day in custody to be treated as a whole day for credit purposes, but points out it has not found a published case specifically holding that the rule applies to minors. However, respondent makes no argument as to why the rule should not apply to minors; rather, it states it “agree[s]” that appellant “should have been credited with 493, rather than 491, days of custody credit.”

**DISPOSITION**

The judgment is modified to award appellant 493 days of custody credit. As modified, the judgment is affirmed. The juvenile court is directed to send a certified copy of its amended commitment to the officer having custody of the minor.

---

McGuiness, P. J.

We concur:

---

Siggins, J.

---

Jenkins, J.