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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY SAYVEZ TAYLOR,

Defendant and Appellant.

A137713

(Solano County  
Super. Ct. No. FCR292617)

This case concerns the availability of presentence credits for a period when defendant Anthony Sayvez Taylor was in custody on the driving under the influence (DUI) charge, with three prior DUI convictions, of which he was convicted in this case (Veh. Code, §§ 23152, subd. (a), 23550, 23550.5) , but his probation had been revoked on the most recent prior DUI conviction sustained in Napa County.<sup>1</sup> Credits were awarded on the probation violation matter (VCR212316) for a 51-day period (April 24, 2012 to June 13, 2012), as to which defendant claims he was also entitled to credits on his DUI sentence. The court determined that defendant’s incarceration during that time was not attributable to his current case, but rather to the probation revocation. Defendant claims this was error and that he was entitled to 51 more actual days of credit and corresponding conduct credits under Penal Code section 4019.<sup>2</sup> We reject the claim

<sup>1</sup> Supervision of defendant’s probation had been transferred to Solano County under Penal Code section 1203.9.

<sup>2</sup> Undesignated statutory references are to the Penal Code.

because defendant's DUI sentence was imposed consecutively to the sentence on probation revocation, and he was not entitled to dual credits on both sentences.

### **BACKGROUND**

On April 21, 2012, Fairfield police officers attempted to stop defendant's car for a missing front license plate. When they did, defendant attempted to evade the stop by accelerating up to 75 miles per hour in a residential area, and he failed to stop at a red light. When he finally stopped and exited his car he staggered and smelled like alcohol. Officers found an open bottle of alcohol on the driver's seat. Defendant had a blood alcohol concentration of .22, nearly three times the legal limit.

Defendant was charged in FCR292617 with a DUI with three priors (Veh. Code, §§ 23152, subd. (a), 23550, 23550.5) as well as driving on a license suspended for a prior DUI (Veh. Code, § 14601.2). On April 24, 2012, the court summarily revoked probation in VCR212316 (the prior DUI conviction in Napa County) based on his new DUI conduct, as well as possessing alcohol, drinking alcohol, operating a vehicle with a measurable amount of alcohol in his system, and failing to obey all laws.

On May 2, 2012, defendant entered guilty pleas to DUI with three prior DUI convictions (Veh. Code, §§ 23152, subd. (a), 23550, 23550.5) and driving on a license previously suspended for DUI convictions (Veh. Code, § 14601.2). Sentencing was originally scheduled for June 13, 2012, and a probation report was prepared.

The probation report calculated credits on both dockets for the period now in question. It showed defendant was entitled to 54 credits on the DUI (including all actual days between April 21 and June 13) and 65 credits on the probation matter.<sup>3</sup> The significance of the date June 13, 2012, is twofold. Not only was it the date originally set for sentencing (and so a probation report was prepared which included a credits calculation up to that date), but also, since the court ultimately sentenced defendant on

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<sup>3</sup> Fourteen of those days had been served in Napa County prior to defendant's arrest on the current DUI, thus making 51 days attributable to custody in Solano County. The discrepancy between the 54-day calculation and the 51-day calculation is that he was arrested on April 21, but his probation was not revoked until April 24.

the probation matter to time served using the June 13 calculation, defendant had fully served that sentence on June 13, 2012. The remaining time in custody from June 14 onward was therefore attributable solely to the DUI conviction.

Sentencing was delayed for several months while the court entertained briefing on whether defendant could serve his time in local custody under the criminal realignment legislation (§ 1170, subd. (h)). Defendant was held in custody continuously from April 21, 2012 until August 23, 2012, when he was released on bail.

On November 8, 2012, the court terminated defendant's probation in case no. VCR212316 and sentenced him to 130 days in county jail, with credit for time served of 65 actual days, plus 65 days under section 4019. In deciding on the punishment for the probation violation the court intentionally selected a term which would be fully served based on presentence credits. As noted above, the sentence made June 13 the day that defendant completed serving his probation revocation sentence. The court continued the matter until November 30 to permit further briefing on the criminal realignment issue. Defendant was remanded to custody.

The confusion over credits was compounded by the fact that probation continued to use the same June 13 calculation without updating it to reflect time in custody after June 13. As of November 16, 2012, the probation report indicated defendant was entitled to 63 actual credits on the DUI case, including the original recommendation of 54 days for April 21 through June 13, and adding only the days in November when defendant was again in custody. It calculated no entitlement to credits between June 14 and August 23. This appears to have been an oversight or misunderstanding by the probation officer regarding defendant's custody status during that time.

On November 30, 2012, the court denied defendant's realignment motion and sentenced him to three years in prison for the current DUI, with a one-year concurrent sentence for driving on a suspended license.

The court initially accepted the probation department's calculation that defendant was entitled to 78 actual days' credit, plus 78 conduct credits, for a total of 156 credits.<sup>4</sup> But the prosecutor reminded the court that it had previously awarded defendant 130 days in the probation violation case from Napa.

“[THE PROSECUTOR]: Your Honor, actually on his other case, on November 8th, you gave him 130 days on that case, and I believe that took up all of his credits at that time because it was 65 plus 65. *If these are going to be consecutive, you were going to make this consecutive to that.*

“THE COURT: I'm going to make it concurrent.<sup>5</sup>

“[THE PROSECUTOR]: Even to his Napa case?

“THE COURT: Oh, the Napa case, um, no. *It's not concurrent to the Napa case.*

“[THE PROSECUTOR]: Because he was awarded credits on that case.

“THE COURT: What were his credit awards in that matter?

“[THE PROSECUTOR]: 65 plus 65.” (Italics added.)

As the court began to work through the numbers, the following discussion ensued:

“[DEFENSE COUNSEL]: Your Honor, give me a moment on the Napa case to see if there was original credits in that. There was 13—there was 14 days in the Napa case that were not accounted for in this particular case.<sup>6</sup> This case and the Napa overrun was only 51 days as of the 13th of June of this year. So the 51 overrun the 65 days that was credited on that date. *I would move just at this point for concurrent sentencing given the circumstances.*

“THE COURT: *I'm not going to give him concurrent—a concurrent sentence, but I'll give him—if he had 13 additional days in that case—*

“[DEFENSE COUNSEL]: 14, so if we subtract 14 from 51.

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<sup>4</sup> Probation calculated the credits up to November 16 as 63. The court added 15 days to account for custody through November 30.

<sup>5</sup> The court had earlier expressed its intention to make the DUI sentence run concurrently with the suspended license sentence.

<sup>6</sup> These 14 days were served in Napa County long prior to the current DUI offense.

“THE COURT: No, I gave him 65 days.

“[DEFENSE COUNSEL]: Right. What I’m saying is there was 14 days that were only accounted for in Napa County, so the 65 days he’s not—he didn’t get credit in this case for the 14 days he served in Napa County. I can show the Court the calculation on the—the Court has the probation calculation, and it’s at page 2 of the credit calculation report on the June 12th, 2012, filing of this case, so it’s the fourth to the last page or something like that.

“THE COURT: Right. I see he had 51 actual days.

“[DEFENSE COUNSEL]: Right. So if we were subtracting time in this case *because of consecutive sentence*, it would be subtracting 51 actual.

“THE COURT: From the 65.

“[DEFENSE COUNSEL]: From the 78.

“THE COURT: Pardon me, from the 78, yes, from the 78. All right. Then his credits in this matter will be as follows, 27 actual days plus 27 2933 [*sic*] credits for a total credit award of 54 days.” (Italics added.)

This calculation included credit for April 21 through April 24, 2012 (when probation was revoked) and for November 8, 2012 through November 30, 2012 (from when defendant was taken back into custody until his formal sentencing). It did not award credits for June 14 to August 23, 2012.

On June 20, 2013, based on the efforts of appointed appellate counsel, the trial court increased the award of credits to grant defendant 67 days of additional actual credits and 67 conduct credits, so that his total credits were 94 actual days, plus 94 conduct credits, for a total of 188 days.<sup>7</sup> This award reflected additional credits for June 14, 2012,

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<sup>7</sup> Because defendant sought correction of the credits in the trial court, this appeal does not run afoul of section 1237.1.

through August 19, 2012,<sup>8</sup> but the court again denied credits for April 25 through June 13, 2012.<sup>9</sup>

“[W]ith respect to his claim that he is entitled to the credits that he had in the Napa case [case VCR212316] because the conduct was the same, that request is going to be denied. The defendant’s—there were a number of reasons for his probation to be revoked in the Napa case, which this Court was actually supervising. It had been transferred here under [section]1203.9. But among the terms of probation that he was on was that, one, he obey all laws, also, that he not drink or possess any alcoholic beverages and, also, that he not operate a motor vehicle with any measurable amount of alcohol in his system. All of these terms were violated when he was convicted of the new DUI offense. And except for the obey all laws, these terms are very different than the new DUI offense and constitute a separate violation. And I think the gist of this is that he could have been violated on that case, or these violations, without ever having been convicted of the new DUI offense.”

On July 29, 2013, (on a motion for reconsideration) the court was further persuaded to award four additional days of actual presentence custody credit, and four days of conduct credit, so that defendant’s total credits were 196 days (98 actual and 98 under section 4019). This award reflected defendant’s custody from August 20 through August 23, 2012.

## **DISCUSSION**

The issue on appeal is whether the court properly denied defendant actual credits for April 25, 2012, through June 13, 2012, as well as corresponding conduct credits under section 4019 for that period. Since we construe section 2900.5 in determining

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<sup>8</sup> When he filed his motion for correction of credits, appellate defense counsel knew defendant had been held in custody until at least August 19, 2012, but did not know the exact date of his release. The exact date turned out to be August 23.

<sup>9</sup> Defendant claims 51 additional days based on custody from April 24 through June 13, but he has already been awarded credits for April 24. We therefore interpret his argument as actually claiming 50 additional days of credit for April 25 through June 13.

entitlement to custody credits, our review is de novo. (*People v. Ravaux* (2006) 142 Cal.App.4th 914, 919.)

The parties both cite and rely upon *People v. Bruner* (1995) 9 Cal.4th 1178 (*Bruner*) as setting forth the controlling principles. Generally speaking, those convicted of crimes are entitled to custody credits under section 2900.5 for time spent in presentence custody. They are also entitled to earn conduct and work credits under section 4019. Despite this simple concept, the Supreme Court has recognized that the question of custody credits when multiple proceedings are involved presents a “recurring troublesome question.” (*In re Joyner* (1989) 48 Cal.3d 487, 489 (*Joyner*).)

The first sentence of section 2900.5, subdivision (b) provides that presentence custody credits shall be given “only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted.” The California Supreme Court has interpreted that section as requiring the defendant to demonstrate—as a matter of strict “but for” causation—that the period of confinement was attributable to the same conduct for which he was ultimately sentenced. “[T]he statute is intended only to prevent inequalities in total confinement among defendants, each similarly sentenced in a *single proceeding*, which inequalities arise solely because one defendant suffered presentence confinement while another did not. Section 2900.5 is not intended to bestow the windfall of duplicative credits against all terms or sentences that are separately imposed in multiple proceedings.” (*Bruner, supra*, 9 Cal.4th at p. 1191.) “The rule of ‘strict causation’ . . . stems from the conclusion that section 2900.5 did not intend to allow credit for a period of presentence restraint unless the *conduct* leading to the sentence was the *true and only unavoidable basis* for the earlier custody.” (*Id.* at p. 1192.) The court concluded that “when 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 *Joyner* should apply.” (*Id.* at p. 1180; see also *Joyner, supra*, 48 Cal.3d at p. 489.)

In *Bruner* the defendant was on parole for armed robbery when an arrest warrant issued based on three alleged parole violations: absconding from supervision, theft of a

credit card, and cocaine use (based on a positive urine test). (*Bruner, supra*, 9 Cal.4th at p. 1181.) When he was arrested for the parole violation a substantial quantity of rock cocaine was discovered on his person. Although he was cited for possession, he was released on his own recognizance on that charge. However, he was kept in custody on the parole hold pending disposition of that matter. Two months later the Board of Prison Terms revoked his parole on the basis of the three earlier violations, plus his possession of cocaine at the time of his arrest. A 12-month term was imposed. Defendant received full credit against this term for the time spent in jail during the two months. (*Ibid.*)

While he was in custody, an information was filed charging him with possession of cocaine. (*Bruner, supra*, 9 Cal.4th at p. 1181.) He entered a guilty plea, but the court awarded no presentence custody credits, reasoning that defendant was in custody during that time on the parole revocation matter, not the cocaine possession charge. (*Id.* at pp. 1181-1182.) The Court of Appeal reversed, holding defendant was entitled to custody credits against his cocaine possession sentence for the entire duration of his presentence custody. (*Id.* at pp. 1181-1182.) The Supreme Court granted review “to determine how section 2900.5 should be applied when a defendant sentenced to a new criminal term seeks credit for presentence custody attributable to a parole revocation caused in part, but not exclusively, by the conduct that led to the new sentence.” (*Id.* at pp. 1182-1183.) It concluded that “such credits should be denied.” (*Id.* at p. 1183.) Defendant claims, despite *Bruner*’s strict causation holding, his circumstances were sufficiently different from *Bruner*’s that he comes within the exception allowing dual credits.

*Bruner* is distinguishable in several respects. First, in *Bruner* it was clear that the defendant’s parole was going to be revoked even if he had not been found in possession of cocaine. An arrest warrant for parole violation had been issued before defendant was found in possession of cocaine. (*Bruner, supra*, 9 Cal.4th at p. 1181.) The cocaine was found when the police went to a residence to arrest him on the parole violation. Second, the other grounds for violation of his parole were truly unrelated to his new offense. His theft of a credit card occurred on a date other than that on which he possessed the

cocaine, his use of cocaine based on a urine test occurred on a date other than that on which he possessed the cocaine, and his absconding from supervision also predated the cocaine possession. Thus, the notion Bruner's cocaine possession was the "but for" cause of his time in custody was unsustainable. Third, the defendant was released on his own recognizance on the cocaine possession charge, which strongly suggested the "but for" cause of his custody was the parole violation. (*Ibid.*) These factual dissimilarities would tend to make defendant's argument more persuasive. However, Bruner was sentenced concurrently, whereas defendant was sentenced to consecutive terms.<sup>10</sup> As we shall discuss, we find this makes all the difference.

The other case chiefly relied upon by defendant is *People v. Williams* (1992) 10 Cal.App.4th 827 (*Williams*), decided by this Division, in which officers arrested defendant for kidnapping and sexually assaulting a minor, and charged him with 13 felony offenses. (*Id.* at p. 830.) The court revoked defendant's probation in an earlier misdemeanor matter based on his failure to "obey all laws" and having sustained "new charges." The misdemeanor matter was ultimately remanded to municipal court, which found defendant violated his probation by failing to "obey all laws." It revoked probation and sentenced defendant on the misdemeanor to 177 days in jail with credit for time served of 76 days. In the felony matter, defendant pled no contest to a single count, and the court sentenced him to serve nine years in prison, but did not award him any credit for time served in presentence custody. (*Ibid.*)

A panel of this Division concluded defendant was entitled to credit against his sentence for time spent in custody after probation was summarily revoked because the custody arose from the identical conduct that led to the criminal sentence. (*Williams, supra*, 10 Cal.App.4th at pp. 832-834.) First, the panel reasoned, the record of the probation revocation disclosed no basis for a conclusion that the "obey all laws" violation related to anything except the kidnapping-assault case. (*Id.* at p. 833.) Second, the mere

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<sup>10</sup> *Joyner, supra*, 48 Cal.3d at p. 490 & fn. 3, *Bruner, supra*, 9 Cal.4th at p. 1180, and *In re Rojas* (1979) 23 Cal.3d 152, 155, all involved concurrent sentencing.

dismissal of certain counts in the criminal proceeding, all of which stemmed from the same criminal episode, did not mean that the revocation was based on conduct different from that leading to the criminal sentence. (*Ibid.*) Although the *Williams* opinion did not specify whether the sentences were concurrent or consecutive, we infer they were concurrent.<sup>11</sup>

While *Williams* is closer to our facts, we find one critical difference that the parties have virtually ignored in their briefing, namely that defendant's DUI sentence was imposed to run *consecutively* with the sentence on the probation violation in the Napa County case. Section 2900.5 prescribes different treatment of concurrent and consecutive sentencing, an issue not addressed in *Williams*. We find this factual distinction dispositive.

The second sentence of section 2900.5, subdivision (b) reads: "Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed." The Supreme Court in *Bruner* said, "By its terms, the [second sentence of section 2900.5] does no more than clarify that when consecutive terms are imposed for multiple offenses in a single proceeding, only one of the terms shall receive credit for presentence custody, while leaving undisturbed the accepted principle that when *concurrent* sentences are imposed at the same time, presentence custody is credited against all." (*Bruner, supra*, 9 Cal.4th at p. 1192, fn. 9.) This sentence, rather than the "attributable to" language of the first sentence, controls the outcome of this case. (Cf. *People v. Torres* (2012) 212 Cal.App.4th 440, 446 [rule of strict causation does not apply in consecutive sentencing where duplicate credits not sought].)

As discussed above, the court clearly intended to impose consecutive sentences. Indeed, it had announced months before that it intended to impose the DUI sentence and

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<sup>11</sup> Since *Williams* did award duplicative credits, we infer it involved concurrent sentencing. If the sentencing court did not specify concurrent or consecutive sentencing, the sentences were concurrent by operation of law. (§ 669; *Bruner, supra*, 9 Cal.4th at pp. 1181-1182.)

the probation revocation sentence as consecutive terms. This appears to be the reason it limited the credits award in the DUI case in the first place, as credit for April 24 through June 13 had already been granted in the probation revocation matter. By denying custody credits for April 25 through June 13, the court was simply giving effect to its determination that the probation revocation sentence and the DUI sentence should run consecutively.

### **DISPOSITION**

For the foregoing reasons, the judgment is affirmed.

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Richman, J.

We concur:

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Haerle, Acting P.J.

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Brick, J.\*

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.