

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMESY KEDRICK DAVIS,

Defendant and Appellant.

A141218

(Solano County  
Super. Ct. No. FCR277331)

Jamesy Kedrick Davis (appellant) appeals from a judgment entered after he pleaded no contest to possessing cocaine base for sale (Health & Saf. Code, § 11351.5) and possessing methamphetamine for sale (Health & Saf. Code, § 11378), and admitted as to both counts that he had suffered a prior conviction (Pen. Code, § 667.5, subd. (b)<sup>1</sup>). He contends the matter must be remanded for the trial court to “adjudicate the conflicting claims of custody credits.” We reject the contention and affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

An information was filed July 20, 2010, charging appellant with: (1) possession of cocaine base for sale (Health & Saf. Code, § 11351.5, count 1); and (2) possession of a controlled substance (methamphetamine) for sale (Health & Saf. Code, § 11378, count 2). The information further alleged as to both counts that appellant had suffered a prior conviction (§ 667.5, subd. (b)). The information was based on an incident in which parole agents who conducted a parole compliance search of appellant’s residence found

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

approximately 30 empty plastic sandwich baggies, a small plastic baggie containing five small bindles of methamphetamine, a small plastic baggie containing five bindles of crack cocaine, and three bindles of crack cocaine. The total weight with packaging of the methamphetamine was 2.3 grams, and the total weight with packaging of the crack cocaine was 3.6 grams. Appellant told the parole agents that he was selling drugs to support his drug habit and to provide himself with basic necessities.

On August 18, 2010, appellant pleaded no contest to both counts and admitted the prior conviction allegations. On September 17, 2010, the trial court imposed, but suspended, a total six-year prison sentence and placed appellant on probation. The court ordered appellant to serve 180 days in county jail, with credit for 164 days, consisting of 82 actual days and 82 additional days under section 4019. The court ordered appellant to participate in the Delancy Street program and remain there until released by the director upon satisfactory completion. The court further ordered that appellant remain in custody until placed in the Delancy Street program.<sup>2</sup> The court confirmed—and appellant stated he understood and agreed—that the plea included a waiver of “all credits,” including “your custody credits, your good time, work credits, program credits, past, present and future,” in the event of a future probation violation. The sentence of probation included the following provision: “Defendant waives these [custody] credits if any future violations: [x] ALL [x] presentence [x] time in Program [x] past/present/future.”

Appellant completed much of the Delancy Street program but left without authorization after a dispute with the director. The trial court revoked appellant’s probation, and appellant was in custody from March 6, 2013, to March 18, 2013. The court reinstated probation on April 24, 2013, and ordered appellant to serve 26 days in county jail, with 26 days of credit for time served, consisting of 13 actual days and 13 additional days under section 4019.

Appellant violated probation again on July 3, 2013, when he failed a drug test. He appeared and was remanded on July 29, 2013, and the trial court revoked his probation

---

<sup>2</sup>Appellant remained in custody for an additional 18 days and entered the Delancy Street program on October 5, 2010.

on August 19, 2013. The court sentenced appellant to six years in prison on November 5, 2013. The court referenced appellant's waiver of credits, but acknowledged his substantial participation in the Delancy Street program and awarded him 835 days actual credit for the time he spent in the program. The court also awarded appellant 200 days credit consisting of 100 actual days and 100 additional days under section 4019 for his time in custody between July 29, 2013, and November 5, 2013, bringing the total number of credits to 1,035 days.

Appellant subsequently moved to "correct" his custody credits, asking for 226 additional days of credit. He asserted he was entitled to 100 actual days and an additional 100 days under section 4019 for the time he spent in custody in 2010 before entering the Delancy Street program, and to 13 actual days and an additional 13 days under section 4019 for the time he spent in custody in early 2013. The trial court denied the motion in a written order, stating "When the defendant was granted probation on September 7, 2010, he waived all credits for any future violations." Appellant filed a notice of appeal on March 3, 2014 and requested a certificate of probable cause, which was denied.

### **DISCUSSION**

Appellant contends the matter must be remanded for the trial court to "adjudicate the conflicting claims of custody credits." There is nothing in the record, however, that shows there were any "conflicting claims." Appellant appears to believe there is a conflict because the trial court awarded 1,035 days of credit, when the probation report stated he was entitled to 1,261 days. The document to which appellant refers, however is simply a chart prepared by the probation department that reflects the dates appellant was in custody in 2010 and 2013. Although the document states that the total credits for actual days served plus credits under section 4019 is 1,261, it does *not* state that appellant is *entitled* to 1,261 days of credits, but rather, confirms that appellant waived all credits: "Per the minute order from 9/17/10, defendant waives all credits: presentence, time in program, past, present & future if any future violations."

As noted, as part of appellant’s plea agreement for probation, he agreed to waive all past, present and future credits. The trial court acknowledged his waiver when, after awarding him a total of 1,035 days for his time in the Delancy Street program and his most recent custody—which it was not required to award—it did not award any additional credits that were previously waived. Appellant, who does not dispute that he entered into a valid waiver of all credits at the time he entered his no contest plea, and also does not dispute that he violated his probation, has failed to cite to any authority to support his position that he is somehow entitled to even more credits than he received. (See e.g., *People v. Burks* (1998) 66 Cal.App.4th 232, 236–237 [so long as a waiver is knowing and intelligent, a defendant who has waived future credits cannot recapture those credits in the event of a probation violation]; *People v. Arnold* (2004) 33 Cal.4th 294, 308–309 [same].)

Appellant also argues the trial court technically failed to comply with section 2900.5, subdivision (d), which provides: “It is the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credit pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment . . . .” The record shows, however, that the court did make its own determination as to credits when it reviewed the probation report, acknowledged the waiver, then stated, “but I am inclined to give him the credits that he acquired while at Delancy Street before violating because . . . I think he put in an effort for two years.” Moreover, the abstract of judgment contains a notation that appellant is to receive a total of 1,035 days of credits, consisting of 935 actual days and 100 additional days under section 4019. Appellant has not shown that he is entitled to relief.

#### **DISPOSITION**

The judgment is affirmed.

---

McGuinness, P.J.

We concur:

---

Pollak, J.

---

Siggins, J.