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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GUSTAVO ANTONIO CASTRO,

Defendant and Appellant.

A141327

(Sonoma County
Super. Ct. No. SCR640218)

Gustavo Antonio Castro appeals from a judgment following his guilty plea as a result of a negotiated disposition. His court-appointed counsel has filed a brief seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 to determine whether there are any arguable issues on appeal. Castro has also filed his own brief asking that we award him additional pre-sentence credits. He specifically does not challenge the validity of his plea or seek to re-open it. Castro is not entitled to additional pre-sentence credits. We conclude there are no issues requiring further review and affirm.

BACKGROUND

One morning the victim, Castro's estranged wife, awoke to find him in the living room of the apartment where she lived with the couple's children. She asked him to leave. She had her phone in her hand, and he grabbed for it. The two wrestled over the phone and fell to the floor. The tussle ended when their eight-year-old son yelled at Castro to get off his mom. The victim's chest was scratched in the altercation and her face, hand and legs were bruised.

An information charged Castro with infliction of corporal injury on a spouse in violation of Penal Code section 273.5 and misdemeanor violation of a protective order under section 273.6. A prior strike conviction for making criminal threats was alleged pursuant to section 1170.12. On September 20, 2013, Castro was arrested on charges alleged in the information as well as a bench warrant issued in two other cases. One of the two cases alleged violation of a protective order as a violation of probation that had recently been imposed on Castro for a misdemeanor conviction of spousal battery.

Castro initially entered a not guilty plea. He later moved to discharge his court appointed attorney. The court conducted a hearing and concluded that there were sound tactical reasons for the actions taken by Castro's counsel that he claimed were deficient. The motion was denied.

Pursuant to a negotiated disposition, Castro entered a guilty plea to a single count of inflicting corporal injury on a spouse. It was agreed that he would admit the prior strike, but could move the court at sentencing to vacate the strike pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The maximum sentence that could be assessed under the plea was four years in the event the trial court did not vacate the prior strike conviction. The probation violation case was resolved with credit for time served and the unsuccessful termination of probation. Two other misdemeanor cases alleging violation of a protective order were dismissed.

The trial court declined to vacate the prior strike, and sentenced Castro to the low term of two years for corporal injury to a spouse that was doubled due to his prior strike conviction for a total prison term of four years. He was awarded 81 days of presentence credit, from December 7, 2013, until the date of sentencing, and the court imposed the lawful measure of fees and fines. His appeal was timely.

DISCUSSION

Based upon our review of the record, we have no reason to question the sufficiency of the court's advisements, Castro's waivers or the explanation of the consequences of his plea. His plea appears to be free, knowing and voluntary. We have no reason to question the plea or the sentence imposed.

Castro has filed a brief arguing that when he was sentenced pursuant to his plea agreement he had 237 days of presentence credit that he says he “never waived.” He argues that his counsel never explained to him that he would lose his credits if he was sentenced to prison. He also says in his brief that he has no desire to withdraw his plea.

Castro did not lose credits as a result of his plea agreement. He was arrested on September 20, 2013, for the charges in this case and two other cases, including violation of a protective order, charged as a probation violation. He admitted the probation violation on December 6, 2013, with credit for time served. The time he was in custody from September 20 to December 6 was credited and attributable to the probation violation. Accordingly, he was in custody on the charges in this case from December 7, 2013, until his sentencing on January 16, 2014, and he was awarded 81 days of presentence credit.

When presentence custody may be attributable to two or more unrelated acts, and where the defendant has received credit for such custody in another proceeding, he is not entitled to duplicative credit against his current sentence. (*People v. Bruner* (1995) 9 Cal.4th 1178, 1180–1181.) Castro was not required to waive credits as a part of his plea. Instead, he received credit for time served on his violation of probation, and presentence credit in this case for his remaining time in jail.

There was no error. Our full review of the record reveals no issue that requires further briefing.

DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.