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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL STEVEN KEELER,

Defendant and Appellant.

A142761

(Marin County  
Super. Ct. No. SC185859A)

Defendant and appellant Carl Steven Keeler appeals from his sentence following a guilty plea. His sole challenge on appeal is the trial court erred in denying him presentence credits. We affirm.

BACKGROUND

In March 2014, appellant pleaded guilty to one count of battery by a prisoner on a nonprisoner (Pen. Code, § 4501.5)<sup>1</sup> and one count of possession of drugs or drug paraphernalia in prison (§ 4573.8). According to the preliminary hearing testimony, in January 2013, while appellant was incarcerated in state prison, a syringe concealed in his hand pricked a correctional officer who was searching him.

Appellant was sentenced in June 2014. At an earlier hearing, the trial court noted “custody credit issues that the lawyers have some disagreement about.” The prosecutor represented to the court that appellant’s release date on his previous term had been March

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<sup>1</sup> All undesignated section references are to the Penal Code.

7, 2014, but because of the conduct underlying the guilty pleas, appellant “was given a sanction of a credit loss,” moving his release date on that term to September 6, 2014. At appellant’s sentencing hearing, defense counsel argued, “according to Penal Code 2900.5, if a person is in custody attributable to proceedings related to the same conduct for which he’s been convicted he is entitled to credits. So he should clearly receive credits from May 17th, 2013 [sic] . . . .” The trial court denied credits.

## DISCUSSION

### I. *Appealability*

As an initial matter, the People argue this appeal should be dismissed because appellant must first seek relief in the trial court. We disagree.

Section 1237.1 provides: “No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, *unless the defendant first presents the claim in the trial court at the time of sentencing*, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court.” (Emphasis added.) Appellant presented the claim in the trial court at the time of sentencing. Moreover, section 1237.1 has been interpreted not to apply to claims resting on legal issues of statutory interpretation (*People v. Delgado* (2012) 210 Cal.App.4th 761, 765–767), such as the claim presented here. Section 1237.1 does not bar this appeal.

### II. *Appellant Is Not Entitled To Presentence Credits*

Section 2900.5 provides presentence credit shall be awarded when a defendant has been in custody prior to sentencing. (§ 2900.5, subd. (a).) The statute clarifies, however, that “credit 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.” (§ 2900.5, subd. (b).) Appellant argues that his custody between May 7, 2014 and his June sentencing was attributable to the same conduct for which he was convicted, and he should therefore be awarded presentence credit for that time.

A similar argument has been rejected in two Court of Appeal decisions. In *People v. Delarosa* (1986) 176 Cal.App.3d 318 (*Delarosa*), the defendant was serving a prison

term for forgery with a scheduled release date of February 6, 1985. (*Id.* at p. 320). He escaped in December 1984 and was arrested on February 2, 1985. (*Ibid.*) The defendant lost 91 days of credits on his forgery term due to the escape (as well as additional days due to other causes) and his scheduled release date was pushed back to September 1985. (*Ibid.*) The defendant was separately prosecuted for the escape and sentenced in June 1985. (*Ibid.*) At sentencing, the trial court awarded him presentence custody credits for the 91 days of lost credit on the forgery term. (*Ibid.*)

The Court of Appeal reversed this award: “ ‘Defendant’s initial release date . . . had been computed on the presumption that his conduct would entitle him to . . . a reduction [in his sentence for good behavior]. The consequence of defendant’s having escaped was not that his original term was lengthened, rather it was that the Department of Corrections declined to reduce his sentence as it had once anticipated doing. In short, defendant did not receive any added punishment on his original sentence due to the escape; he simply came . . . closer to serving the full sentence initially imposed.’ ” (*Delarosa, supra*, 176 Cal.App.3d at p. 321; see also *id.* at p. 322 [“throughout the entire presentence incarceration on the escape, Delarosa continued to serve the preexisting forgery sentences and never accrued presentence credits against the escape”].) *Delarosa* relied on *People v. Quijada* (1984) 156 Cal.App.3d 789 (*Quijada*) (*Delarosa*, at pp. 320–321), which also rejected the argument appellant sets forth. (*Quijada*, at pp. 791–792.)

Appellant has made no argument distinguishing *Delarosa* and *Quijada* from the instant case. Accordingly, we affirm the trial court’s denial of presentence credits.

#### DISPOSITION

The judgment is affirmed.

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SIMONS, Acting P.J.

We concur.

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NEEDHAM, J.

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BRUINIERS, J.