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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.

DYRELL WAYNE JONES,

Defendant and Appellant.

A143249

(Contra Costa County Super.
Ct. No. 051210657)

Because parolee Dyrell Wayne Jones did not want to be found in possession of a loaded firearm, he fled when a police officer tried to stop Jones’s vehicle. Before he was apprehended, Jones fired seven bullets into the windshield of the officer’s vehicle. A jury convicted Jones of attempted murder of a peace officer (Pen. Code,¹ §§ 187, 664), and being a past-convicted felon in possession of a firearm and ammunition (former §§ 12021, 12316). After it found true allegations that Jones had a number of prior felony convictions (§§ 667, 667.5, 1170.12), the trial court sentenced him to state prison for an aggregate term of 39 years to life.

Jones first contends that the attempted murder sentence was improper. However, he “acknowledges that the trial court’s sentence is proper under the majority opinion in *People v. Jefferson* (1999) 21 Cal.4th 86.” He “presents this argument only to preserve it for further review by higher courts,” because he also acknowledges “this Court must follow *Jefferson*. (*Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450.)” Until our

¹ Statutory references are to this code.

Supreme Court, or the United States Supreme Court overturns *Jefferson*, Jones correctly anticipates ministerial rejection of his claim.

By contrast, the Attorney General concedes Jones's claim that the abstract of judgment incorrectly shows the attempted murder was deliberate and premeditated, and that this requires preparation of an amended abstract by the trial court.

The only true point of contention is Jones's claim that he was entitled to 186 days of conduct credits under section 4019. The Attorney General concedes the possibility of error, but argues the issue should not, as defendant maintains, be decided on this appeal. In her words:

“Penal Code section 2933.2 provides that those convicted of murder accrue neither section 2933 credits nor section 4019 credits, but it does not preclude 15 percent credits for those convicted of attempted murder.

“Although this would appear to be error, we cannot on this record, concede that appellant is entitled to a particular number of presentence conduct credits. As the court noted [at the time of sentencing], appellant was on parole at the time he was arrested for the instant offense and was being held on a parole hold awaiting trial. If appellant's parole was separately revoked as a result of the acts leading to his conviction, then at least a period of time spent in pretrial custody would be attributable to the parole revocation and appellant may not be entitled to receive conduct credits towards his current conviction. [Citations.] However, if the parole revocation and sentencing occurred at the same time, appellant would be entitled to pretrial conduct credit on the current conviction. Our record is unclear when, or even if, appellant's parole was revoked in this case.^[2] [Citation.] It would ordinarily be appellant's responsibility to show that the time in pretrial custody was directly attributable to the current conviction. [Citation.]

² Actually, this statement is only partially correct. At the time of sentencing the court stated that “his [Jones's] parole was revoked,” but the court did not state *when* it was revoked.

“Furthermore, appellant had numerous instances of poor behavior while in jail awaiting trial which may have caused a reduction in applicable credits. He had numerous incidents in jail where he was written up and had three actual disciplinary violations. [Citations.] Good time and work time credits may be revoked for disciplinary violations, for institutional determinations that work and conduct credits should not be offered to a particular inmate, and for refusal to work; and those in security housing or administrative segregation for misconduct are ineligible for such credits, for example. (See §§ 2933, subd. (b), 2933.6.)

“Unfortunately, the matter needs to be remanded for the [trial] court to determine whether appellant’s pretrial custody was separately attributable to a parole revocation and to determine whether appellant’s disciplinary infractions should have reduced any pretrial custody credit.”

Jones does not dispute any of these assertions, but responds only that “presentence custody dates were uncontested in the trial court,” and thus is “a simple math calculation, which this Court can and should perform expeditiously. Remand for this task would be a tremendous waste of judicial resources.”

With one partial exception (seen fn. 2, *ante*), the sentencing transcript and the report of the probation officer shed no light on the matters mentioned by the Attorney General. As these are fact-intensive matters, we elect not to preempt the trial court’s initial review of them. (Cf. *People v. Fares* (1993) 16 Cal.App.4th 954, 956–957 [“this is the sort of determination trial courts are in the best position to make, aided by their administrative support including the probation department”], 958 [“If a dispute arises as to the correct calculation of credit days, such should be presented . . . ‘for resolution to the court which imposed the sentence and which has ready access to the information necessary to resolve the dispute.’ ”].)

The judgment is reversed, and the cause is remanded with directions that the trial court determine the number of conduct credits, if any, to which Dyrell Wayne Jones may be entitled, prepare an amended abstract of judgment, and forward a certified copy to the Department of Corrections and Rehabilitation.

Richman, Acting P.J.

We concur:

Stewart, J.

Miller, J.

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