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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN ALBERT BOONE,

Defendant and Appellant.

A146655

(Humboldt County
Super. Ct. Nos. CR1504254,
CR1504282, CR1504570

I.

INTRODUCTION

Appellant Jonathan Boone appeals from his sentencing following his plea agreement entered in three separate criminal cases. He contends that at sentencing the trial court erred in denying him 76 days of custody credit toward his prison sentence imposed for the same criminal conduct that constituted a violation of his earlier imposed “Post-Release Community Supervision Sentence” (PRCS). Although the court applied the credit to appellant’s PRCS sentence, it did not give dual credit toward the related, but separate, firearm conviction.

On September 8, 2016, appellant notified the court that he was released from custody on August 1, 2016. Appellant, however, argues his appeal is not moot because the calculation of custody credit may affect any outstanding fines or fees. Appellant has failed to demonstrate any collateral consequences, and we conclude his appeal is moot.

II.

FACTUAL AND PROCEDURAL BACKGROUND

On November 29, 2012, appellant was placed on PRCS following his release from prison for a domestic violence conviction.

On September 13, 2015, Ben Omev, a Eureka police officer, stopped appellant and searched him. Omev found four grams of heroin in appellant's pants pocket. Because appellant was on formal probation, the officer also searched his residence. Officer Omev found a revolver in appellant's bedroom.

On September 15, 2015, the probation department filed a petition to revoke appellant's PRCS in Case No. CR1504254 based upon the September 13 arrest for being a felon in possession of a firearm and possession of heroin.

On September 16, 2015, the Humboldt County District Attorney's Office filed a separate felony complaint in Case No. CR1504282 charging appellant with being a felon in possession of a firearm in violation of Penal Code section 29800, subdivision (a)¹ (count one), and misdemeanor possession of heroin in violation of Health and Safety Code section 11350, subdivision (a) (count two).

While in custody on the charges in Case No. CR1504254, appellant was found with heroin and marijuana. The Humboldt County District Attorney's Office filed a third felony complaint in Case No. CR1504570 charging appellant with two counts of possession of illegal drugs in a jail facility in violation of section 4573.6.

Appellant entered into a plea agreement to resolve all three cases. Appellant pleaded guilty to being a felon in possession of a firearm (count one from Case No.

¹ All subsequent statutory references are to the Penal Code unless otherwise identified.

CR1504282), possession of marijuana in jail (count two from Case No. 1504570), and admitted the violation of his PRCS term (Case No. CR1504254).

The court sentenced appellant to the low term of two years in state prison on the firearm count (Case No. CR1504282) and two years on the marijuana count (Case No. CR1504570), both sentences to run concurrent. The court imposed a \$600 restitution fine in each case, and an additional \$600 restitution fine for each case was imposed and stayed pending successful completion of PRCS.

On the issue of the sentence for appellant's violation of PRCS (Case No. CR1504254), defense counsel argued that appellant was entitled to custody credit because he violated PRCS by committing the new crime to which he plead guilty and was sentenced. The People argued: "We ask the Court to just impose credit for time served, since he was brought into custody on the most resent [*sic*] matters. We ask that the PRCS time be consecutive to the prison time in the two []other cases."

The court imposed a consecutive sentence for the PRCS violation and allowed "zero credits" for the prison commitment relating to the firearm offense (in Case No. CR1504282). The court allowed 76 days credit for the PRCS violation, consisting of 38 days actual credit and 38 days good conduct credit, and sentenced appellant to time served (in Case No. CR1504254). For the PRCS violation, the court again imposed a \$600 restitution fine, and an additional \$600 restitution fine was imposed and stayed pending successful completion of PRCS.

III.

DISCUSSION

A. Appellant's Release from Custody Renders This Appeal Moot

During the pendency of this expedited appeal, appellant was released from custody on August 1, 2016.² In a single sentence in a footnote in appellant's supplemental letter

² In an order dated August 8, 2016, this court requested supplemental letter briefs from each party addressing *People v. Santa Ana* (2016) 247 Cal.App.4th 1123 and *People v. Cooksey* (2002) 95 Cal.App.4th 1407 on the issue of the imposition of custody credits for consecutive sentences under section 2900.5, subdivision (b).

brief, he argues the appeal is not moot because the calculation of custody credits not only affects his sentence, but the custody credits are also applied to “outstanding fines or fees.” (*People v. Sellner* (2015) 240 Cal.App.4th 699, 701.) Respondent does not address the issue in its supplemental brief.

In sentencing appellant the court imposed a restitution fine pursuant to section 1202.4, subdivision (b) of \$600 for Case No. CR1504570, and \$600 for Case No. CR1504282. It also imposed a probation revocation fine of \$600 pursuant to section 1202.45 for each case. In Case No. CR1504254, the court ordered probation to calculate a post release revocation fine pursuant to section 1202.45, subdivision (b). No other fines were imposed.

At the time of appellant’s sentencing, section 1202.4, subdivision (b) provided: “In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record.” For a person convicted of a felony the fine was a minimum of \$300 and not more than \$10,000. (§ 1202.4, subd. (b)(1).) “In setting a felony restitution fine, the court may determine the amount of the fine as the product of the minimum fine pursuant to paragraph (1) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.” (§ 1202.4, subd. (b)(2).)

Section 1202.45 provides: “In every case where a person is convicted of a crime and his or her sentence includes a period of parole, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4.” (§ 1202.45, subd. (a).)

While appellant cites *People v. Sellner*, *supra*, 240 Cal.App.4th at page 701, he has provided no analysis as to how that case³ supports his argument that a reduction in his two-year concurrent prison term would necessitate a reduction in the amount of restitution fines imposed by the court. The court had discretion to impose a fine from the minimum of \$300 to the maximum of \$10,000. (§ 1202.4, subd. (b)(1).) On the record before us, there is no evidence as to how the court calculated the restitution fine, and no basis to conclude reapplication of the custody credits would have impacted the fines.

The same is true for any reduction in the \$600 restitution fine pursuant to section 1202.45. There were no other fines imposed by the court.

When a defendant is released from custody issues regarding custody credits are rendered moot unless the credits can impact the defendant's parole period or the fines imposed. (*People v. Valencia* (2014) 226 Cal.App.4th 326, 329.) Appellant has failed to demonstrate that the application of custody credits to his sentence would have impacted the restitution fines imposed or have any other collateral consequences. (See, e.g., *People v. Ellison* (2003) 111 Cal.App.4th 1360, 1368–1369 [a criminal case should not be considered moot where a defendant has completed a sentence if the sentence may have disadvantageous collateral consequences].)

Appellant received 76 days credit toward his PRCS violation and was sentenced to time served, and he has since been released from custody on his concurrent sentence for the other charges. The issue of the correct application of custody credits to his sentence is now rendered moot.

IV. DISPOSITION

We order the appeal dismissed as moot.

³ In *Sellner*, the issue was whether the trial court erred in imposing a two-year state prison sentence rather than an eight-month county jail term to run consecutively with another charge reduced from a felony to a misdemeanor under Proposition 47. (*Ibid.*)

RUVOLO, P. J.

We concur:

RIVERA, J.

STREETER, J.