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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON DASHAWN HARDMAN,

Defendant and Appellant.

B239252

(Los Angeles County
Super. Ct. No. BA390499)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed as modified, remanded with directions.

California Appellate Project, Jonathan B. Steiner and Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Chung L. Mar and Victoria B. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Brandon Dashawn Hardman was charged and convicted of one count of attempted second degree robbery (Pen. Code, §§ 664/211), arising out of an incident occurring on October 28, 2011.¹ The court suspended the imposition of sentence and placed appellant on probation for a period of three years. One condition of probation was that appellant serve 25 days in county jail. The court gave appellant credit for 25 days of custody, consisting of 22 days of actual custody and an additional 3 days of work time/good time credit (15 percent of 22).

Appellant contends that the court miscalculated presentence custody credits. First, he contends the court erroneously concluded that he had been in custody 22 days, when in fact, he was entitled to 24 days of actual custody credit.² Second, he contends the court wrongly concluded that he was entitled to no more than 15 percent good time/work time credit based on the mistaken belief that the crime of attempted robbery fit the definition of a violent felony for purposes of section 2933.1.³ Third, appellant contends that because his crime occurred after October 1,

¹ Because the only issue on appeal relates to presentence custody credits, we do not summarize the facts of the offense. Undesignated statutory references are to the Penal Code.

² There is no dispute that appellant was taken into custody on October 28, 2011, released on his own recognizance on November 16, 2011, remanded into custody on February 6, 2012 (the day of the guilty verdict), and sentenced on February 9, 2012. Therefore, he was entitled to 20 days of credit for the period between October 28 and November 16, and 4 days of credit for the period between February 6 and 9. (See *People v. Bravo* (1990) 219 Cal.App.3d 729, 735 [custody credits computed on full period of custody, with all partial days treated as whole days]; accord, *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48; *People v. Downey* (2000) 82 Cal.App.4th 899, 920.)

³ Section 2933.1, subdivision (a), states that persons who are convicted of a felony listed in section 667.5, subdivision (c), accrue no more than 15 percent good time/work time credits; section 667.5, subdivision (c), does not include attempted robbery in its definition of violent felony. Accordingly, appellant was entitled to full credit. (See *In re Mitchell* (2000) 81 Cal.App.4th 653, 656-657 [where defendant convicted of conspiracy to commit robbery, 15 percent custody credit limitation set forth in section 2933.1, subdivision (a), not applicable because crime not specified as qualifying violent felony in

2011, he was entitled to day-for-day work time/good time credit based on every day spent in county jail, under recent amendments to section 4019.⁴

Respondent does not dispute any of appellant's contentions.⁵ We have reviewed the record and the applicable authorities and found no defect in appellant's analysis. Moreover, appellant complied with section 1237.1, which states that no appeal shall be taken on the ground of an error in the calculation of presentence custody credits unless the defendant first presents the claim in the trial court. On July 11, 2012, appellant sought resolution of the custody credit issue in the trial court, and was denied relief. Accordingly, we agree that the judgment must be modified to reflect the correct amount of presentence custody credit.

section 667.5, subdivision (c)]; see also *People v. Reed* (2005) 129 Cal.App.4th 1281, 1283-1285 [striking enhancement based on prior conviction of attempted possession of controlled substance where enhancement provision said nothing about attempts, noting that “[a]n attempt is an offense ‘separate’ and ‘distinct’ from the completed crime”]; *People v. Finley* (1994) 26 Cal.App.4th 454, 457-459 [striking recidivist enhancement where defendant pled to attempted indecent exposure and statute on which trial court relied in calculating sentence did not specify that it applied to attempts].)

⁴ See § 4019, subd. (h); *People v. Verba* (2012) 210 Cal.App.4th 991, 993 [“Defendants who committed their crimes on or after October 1, 2011, are eligible for presentence conduct credits calculated on the basis of two days of conduct credit for every two days of actual custody.”].

⁵ As respondent points out, the errors were due primarily to defense counsel's misstatements to the court concerning the number of days appellant had spent in custody.

DISPOSITION

The judgment is modified to reflect 48 days of presentence custody credit, consisting of 24 days of actual credit and 24 days of good time/work time credit. In all other respects the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment to reflect this modification and to forward a copy to the Department of Corrections and Rehabilitation.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.