

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RAY JOSEPH CAMPOS,

Defendant and Appellant.

B254977

(Los Angeles County

Super. Ct. No. VA122412)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Raul A. Shagun, Judge. Affirmed as modified.

Derek K. Kowata, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Jonathan
J. Kline and Esther P. Kim, Deputy Attorneys General, for Plaintiff and
Respondent.

BACKGROUND

Appellant Ray Joseph Campos was arrested on October 21, 2011. In May 2012, he was charged in a two-count information with the murder of George Anthony Sosa (Pen. Code, § 187, subd. (a), count one), and the attempted willful, deliberate and premeditated murder of Damian Anthony Casillas (§§ 664/187, subd. (a), count two).¹ As to both counts it was further alleged that appellant personally used a deadly weapon (a knife) (§ 12022, subd. (b)(1)), and that the offenses were committed for the benefit of a criminal street gang within the meaning of section 186.22, subd. (b)(1)(C). Appellant pled not guilty. Following a jury trial, he was convicted of second degree murder in count one.² The jury also found the deadly weapon and gang allegations true. The jury deadlocked on count two, which was subsequently dismissed.

On March 13, 2014, the court sentenced appellant to 16 years to life in prison, consisting of 15 years to life for the base count of second degree murder (see § 190, subd. (a)), plus one year for the weapon enhancement (see § 12022, subd. (b)(1)). The court stayed the penalty for the gang enhancement.³ Appellant was awarded 873 days of custody credit.⁴

¹ Undesignated statutory references are to the Penal Code.

² A detailed statement of facts is omitted because the facts are irrelevant to the issues raised on appeal.

³ Although the minute order stated that the penalty under section 186.22, subdivision (b)(1)(C), was “stay[ed],” the abstract of judgment did not include any reference to section 186.22.

⁴ Appellant was also ordered to pay various fines, fees and assessments, to provide fingerprints and tissue samples, and to register as a gang member.

DISCUSSION

A. *Gang Enhancement*

Appellant contends the trial court erred in staying the gang enhancement under section 186.22, subdivision (b)(1)(C). Respondent does not dispute that the court's decision to stay rather than strike the subdivision (b)(1)(C) enhancement was error, but contends the abstract of judgment must be modified to include a 15-year minimum parole eligibility date under section 186.22, subdivision (b)(5). We agree with both contentions.

Section 186.22, subdivision (b)(1), provides that persons convicted of felonies “committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall upon conviction” be subject to additional punishment as provided in the subdivision. In *People v. Lopez* (2005) 34 Cal.4th 1002, the Supreme Court held that section 186.22, subdivision (b)(1)(C), which imposes an additional 10-year term, does not apply to persons sentenced to life terms, including terms of “years to life” imposed for first and second degree murder. (*People v. Lopez, supra*, 34 Cal.4th at p. 1007; *People v. Williams* (2014) 227 Cal.App.4th 733, 741-742.) Instead, such crimes are subject to section 186.22, subdivision (b)(5), which provides that “any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.” (*People v. Lopez, supra*, at p. 1005; *People v. Williams, supra*, 227 Cal.App.4th at pp. 741-742.)

Here, appellant was convicted of second degree murder and sentenced to 15 years to life (plus an additional year for the weapon enhancement). Accordingly, the sentence must be modified to strike rather than stay the section 186.22, subdivision (b)(1)(C) enhancement, and to provide that appellant may not be

paroled until he has served a minimum of 15 calendar years under section 186.22, subdivision (b)(5).⁵

B. Custody Credit

Appellant further contends that the abstract of judgment should be corrected to reflect two additional days of custody credit, for a total of 875 days rather than 873. Including the beginning and end date in the calculation, there are 875 days between October 21, 2011 (the date of appellant’s arrest) and March 13, 2014 (the date he was sentenced). (See § 2900.5; *People v. Morgain* (2009) 177 Cal.App.4th 454, 469 [defendant entitled to presentence custody credit for the date of his arrest and the date of his sentencing]; *People v. Smith* (1989) 211 Cal.App.3d 523, 526 [“Since section 2900.5 speaks in terms of ‘days’ instead of ‘hours,’ it is presumed the Legislature intended to treat any partial day as a whole day.”].) Respondent does not dispute that appellant is entitled to the additional two days.

⁵ As the Supreme Court stated in *People v. Lopez*, imposing a minimum parole eligibility term of 15 years “will have no practical effect for . . . second degree murderers, who now have a minimum parole eligibility term of 15 years.” (*People v. Lopez, supra*, 34 Cal.4th at p. 1009.)

DISPOSITION

The judgment is modified to strike rather than stay the section 186.22, subdivision (b)(1)(C) enhancement, to impose in its stead the 15-year minimum parole eligibility term required by section 186.22, subdivision (b)(5), and to award 875 days of custody credit. In all other respects, the judgment is affirmed. The trial court is directed upon issuance of the remittitur to prepare and forward to the Department of Corrections and Rehabilitation a certified copy of an amended abstract of judgment to include a provision that appellant may not be paroled until he has served a minimum of 15 calendar years under section 186.22, subdivision (b)(5), and to reflect 875 days of custody credit.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.