

Filed 6/8/16 In re M.M. CA2/5
On rehearing

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.M., a Person Coming Under the
Juvenile Court Law.

B265817
(Los Angeles County
Super. Ct. No. NJ28058)

THE PEOPLE,

Plaintiff and Respondent,

v.

M.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, John C. Lawson, II, Judge. Reversed in part, affirmed in part, and remanded.

Torres & Torres, Steven A. Torres, 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, Victoria B. Wilson, Supervising Deputy Attorney General and Carl N. Henry, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court sustained the allegations of a petition filed by the District Attorney of Orange County alleging defendant and appellant M.M. committed the crime of second degree burglary. M.M.'s sole contention on appeal is that the juvenile court did not properly calculate the amount of his custody credits. We reverse the order as to the amount of M.M.'s custody credits, and remand the matter to the juvenile court for the limited purpose of determining the number of custody credit days for which M.M. is entitled consistent with this opinion. In all other respects the order is affirmed.

PROCEDURAL BACKGROUND

On August 8, 2014, the District Attorney of Los Angeles County filed a petition pursuant to Welfare and Institutions Code section 602 alleging that M.M. committed first degree residential burglary in violation of Penal Code section 459¹ (first petition). In October 2014, M.M. admitted the allegations contained in the first petition. The juvenile court found the first petition to be true; declared the offense to be a felony; declared M.M. to be a ward of the court, and placed M.M. on probation for 12 to 36 months. The record does not show that M.M. received any predisposition credits.

A second petition was filed pursuant to Welfare and Institutions Code section 602 on February 18, 2015, by the District Attorney of Orange County alleging that M.M. committed misdemeanor second degree burglary in violation of sections 459 through 460, subdivision (b) (second petition). In May 2015, M.M. admitted the allegations contained in the second petition, and the juvenile court found the second petition to be true. In June 2015, the case was transferred to Los Angeles County Superior Court. In July 2015, juvenile court declared M.M. to be a ward of the court, ordered M.M.'s prior probation

¹ All statutory references are to the Penal Code, unless otherwise indicated.

conditions to remain in force, placed M.M. on probation for up to six years and two months, and awarded M.M. one day of predisposition credit. M.M. filed a timely notice of appeal.

DISCUSSION

The record does not show that M.M. received any predisposition credits regarding his sentence in connection with the first petition. M.M. seeks one or more days of custody credit based on his reading of the record that he “was at least arrested [regarding the first] petition.”

In criminal cases, 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” “[S]ection 1237.1 only applies when the sole issue raised on appeal involves a criminal defendant’s contention that there was a miscalculation of presentence credits. In other words, section 1237.1 does not require a motion be filed in the trial court as a precondition to litigating the amount of presentence credits when there are other issues raised on direct appeal.” (*People v. Acosta* (1996) 48 Cal.App.4th 411, 420, 427; accord, *People v. Florez* (2005) 132 Cal.App.4th 314, 318, fn. 12; *People v. Duran* (1998) 67 Cal.App.4th 267, 269-270.) The Attorney General concedes, however, that section 1237.1 does not apply to juvenile cases.² (*In re Antwon R.* (2001) 87 Cal.App.4th 348.) We agree with the Attorney General’s concession, so we may address the merits of M.M.’s claims.

² After the original opinion was filed on May 9, 2016, M.M. argued in his May 17, 2016 petition for rehearing that section 1237.1 does not apply to juvenile cases. M.M. did not argue this in his prior briefs. The failure to properly calculate presentence custody credit is a jurisdictional issue which may be corrected at any time. (*People v. Chilelli* (2014) 225 Cal.App.4th 581, 591.)

M.M. has received only one day of custody credit, but it appears that he was in custody at least for a total of two days (if not more) on the two petitions. In seeking one or more additional days of custody credit, M.M. relies on a Long Beach Police Department document associated with the first petition, dated July 21, 2014. That document references “BK # 4037932” (apparently a booking number) and states that the “reason(s) minor was taken into custody” was for the charge of residential burglary in violation of Penal Code section 459 (promise to appear). It therefore appears that M.M. was in custody in connection with the first petition, but the record is unclear as to the period of time M.M. was in custody. The matter is remanded to the juvenile court to determine the number of custody credit days for which M.M. is entitled.

DISPOSITION

The order is reversed in part, and the matter is remanded to the juvenile court for the limited purpose of determining the number of custody credit days for which M.M. is entitled consistent with this opinion. In all other respects the order is affirmed.

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RAPHAEL, J.*

We concur:

TURNER, P.J.

BAKER, J.

* Judge of the Superior Court of the County of Los Angeles, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.