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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN EDWARD JOINER,

Defendant and Appellant.

C067565

(Super. Ct. No.  
10F2520)

Appointed counsel for defendant Steven Edward Joiner asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Our review indicates that defendant is entitled to two days of additional presentence credit. We will modify the judgment and affirm the judgment as modified.

I

Because the matter was resolved by plea, the facts are taken from the probation officer's report. On March 4, 2010, at

10:50 p.m., a California Highway Patrol officer noticed that the car ahead was making hard, jerking movements within its lane. The officer drove closer and observed that the car had a crack in the windshield. The officer pulled the car over.

Defendant was the driver of the car. His eyes were red and watery, his speech was slurred and he appeared disoriented. The car interior smelled of alcohol. Defendant failed a series of field sobriety tests and he was arrested. Defendant submitted to a preliminary alcohol screening test that showed 0.10 percent blood-alcohol content at 11:51 p.m., and 0.09 percent blood-alcohol content at 11:55 p.m.

Defendant pleaded no contest to driving under the influence (DUI) of alcohol within 10 years of a prior felony DUI conviction (Veh. Code, §§ 23152, subd. (a), 23550.5, subd. (a); count 1) and driving with a blood-alcohol level of 0.08 percent or more within 10 years of a prior felony DUI conviction (Veh. Code, §§ 23152, subd. (b), 23550.5, subd. (a); count 2). In exchange, two related counts were dismissed.

The trial court sentenced defendant on count 1 to the middle term of two years in prison. Sentence on count 2 was stayed pursuant to Penal Code section 654. Defendant was ordered to pay a \$2,726 fine including penalty assessments, a \$200 restitution fine (Pen. Code, § 1202.4) plus administrative fee, a \$200 restitution fine stayed pending successful completion of parole (Pen. Code, § 1202.45), a \$40 court security fee (§ 1465.8, subd. (a)(1)), and a \$30 court facilities assessment (Gov. Code, § 70373). The trial court

awarded defendant two days of custody credit and no conduct credit.

## II

Appointed counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Our review indicates that defendant is entitled to additional presentence credit. Defendant was sentenced to two years in state prison on January 6, 2011. He was given presentence custody credit for two days actually served, but he received no days for conduct credit.<sup>1</sup> However, because an executed prison sentence was imposed, defendant's presentence credit should have been calculated pursuant to former Penal Code section 2933, subdivision (e)(1), effective September 28, 2010. (Stats. 2010, ch. 426, § 1.) That former section provided in pertinent part: "(e)(1) Notwithstanding Section 4019 and subject to the limitations of this subdivision, a prisoner sentenced to the state prison under Section 1170 for whom the sentence is executed shall have one day deducted from his or her

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<sup>1</sup> The trial court may have been relying on the version of Penal Code section 4019 effective January 25, 2010, which precluded conduct credit for persons committed for less than four days. (Pen. Code, § 4019, subd. (e).)

period of confinement for every day he or she served in a county jail . . . .” Nothing in the record indicates that defendant is disqualified from receiving the credits provided by Penal Code section 2933. Accordingly, he is entitled to two additional days of presentence credit.

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to provide defendant with two additional days of presentence credit. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect this modification and to forward a certified copy of the amended abstract of judgment to the California Department of Corrections and Rehabilitation.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.