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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JOEL MORA,

Defendant and Appellant.

C068125

(Super. Ct. No. SF109178A)

In accordance with a negotiated plea agreement, defendant David Joel Mora pleaded guilty to committing gross vehicular manslaughter while intoxicated, failing to stop at the scene of the accident, driving under the influence of alcohol, causing injury to multiple victims and inflicting great bodily injury. In exchange, defendant received a stipulated state prison term of 19 years eight months, and agreed to waive 365 days of presentence credit.

At sentencing, the trial court awarded defendant 544 days of custody credit plus 81 days of conduct credit, for 625 days of presentence credit against his sentence.¹

On appeal, defendant contends, and the People concede that the credit award is incorrect. The parties agree that defendant was in actual custody 910 days between his arrest and sentencing; defendant earned an additional 15 percent credit, or 136 days (Pen. Code, § 2933.1), for a total of 1,046 days of presentence credit. Under the terms of the plea bargain, defendant waived 365 days of credit; subtracting 365 days from 1,046 days leaves 681 days of presentence credit to which defendant was entitled.

The trial court awarded defendant only 625 days of presentence credit. It appears the trial court may have reached this number by deducting 365 days of credit waived from defendant's 910 actual custody days, rather than from his total available presentence credit, resulting in a mathematical error. The record of defendant's plea agreement does not indicate this is what the parties intended.

Defendant is entitled to a total of 681 days of presentence credit, an additional conduct credit of 56 days against his sentence, increasing his conduct credit from 81 to 136 days. We shall order the abstract of judgment modified to

¹ The trial court denied defendant's postjudgment request to correct the credit award, and the issue is properly before us. (Pen. Code, § 1237.1.)

correct this error. (*People v. Moomey* (2001) 194 Cal.App.4th 850, 859-860.)

DISPOSITION

The trial court is directed to modify the judgment to provide for a total of 681 days of presentence credit in accordance with this opinion. The trial court is further directed to prepare an amended abstract of judgment to reflect the additional award of conduct and presentence credit, and to forward certified copies of the minute order reflecting the court's modification of the judgment and the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.

BUTZ, J.

We concur:

NICHOLSON, Acting P. J.

MURRAY, J.