

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
THIRD APPELLATE DISTRICT  
(Butte)

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
HECTOR ORTEGA ROLDAN,  
  
Defendant and Appellant.

C070366  
  
(Super. Ct. No.  
CM035059)

Appointed counsel for defendant Hector Ortega Roldan has 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.<sup>1</sup> (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Having reviewed the record as required by *Wende*, we modify the judgment to award additional custody credits and otherwise affirm.

---

<sup>1</sup> 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.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On August 25, 2011, after accusing his wife of infidelity, defendant kicked her in the shin and punched her in the face. Later that night, he sexually assaulted her.

On November 3, 2011, defendant pled no contest to inflicting corporal injury to a spouse (Pen. Code, § 273.5, subd. (a)).<sup>2</sup> The remaining charges were dismissed with a *Harvey* waiver.<sup>3</sup>

On December 1, 2011, the trial court suspended imposition of sentence and placed defendant on formal probation for a period of three years, on the condition he serve 180 days in county jail. Defendant was given credit for 99 days of presentence custody. The trial court imposed various fines and fees and ordered defendant attend a batterer's treatment program. At a subsequent probation review hearing, the trial court modified the probation order to require defendant attend a sex offenders therapy program.

Defendant appeals. He did not obtain a certificate of probable cause. (§ 1237.5.)

Our review of the record reveals that, although the issue was raised by defense counsel, the trial court failed to award

---

<sup>2</sup> Subsequent undesignated statutory references are to the Penal Code.

<sup>3</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

defendant conduct credits. As there is no indication in the record that defendant was not entitled to conduct credit, it appears the trial court erroneously left the calculation of conduct credits to another agency. That was error. The trial court has a duty to determine all dates of custody. (§ 2900.5, subd. (d).)

Section 2900.5, subdivision (a) provides, in pertinent part: "In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, . . . all days of custody of the defendant, *including days . . . credited to the period of confinement pursuant to Section 4019, . . . shall be credited upon his or her term of imprisonment . . . .*" (Italics added.) Subdivision (d) further provides: "It shall be the *duty of the court imposing the sentence* to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited pursuant to this section." (Italics added.)

Defendant is entitled to know the basis for the trial court's determination of his presentence credit and to dispute them if he is in disagreement. (§ 1237.1.) Moreover, it is impossible for this court to review an award of conduct credits unless the trial court has first made the requisite determination.

Here, defendant is entitled to conduct credits as governed by the provisions of section 4019, effective September 28, 2010, i.e., two days of conduct credit for every six days served.

Accordingly, defendant, having served 99 actual days in custody, is entitled to 48 days of conduct credit. (See *People v. Fry* (1993) 19 Cal.App.4th 1334, 1341 [credits calculated by dividing the number of days spent in custody by four, rounding that number down to its nearest whole number, and then multiplying the result by two].)

In the interest of judicial economy, we correct this unauthorized omission and error without having requested supplemental briefing. A party claiming to be aggrieved by this procedure may petition for rehearing. (Gov. Code, § 68081.)

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 award defendant 147 days of presentence custody credit (99 actual days and 48 conduct days). As modified, the judgment is affirmed. The trial court is directed to amend the minute order and order of probation to reflect the modification, and to send a certified copy of the amended order to the Butte County Probation Department.

BLEASE, J.

We concur:

RAYE, P. J.

ROBIE, J.