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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

(Lassen)

THE PEOPLE,

Plaintiff and Respondent,

v.

DIANA L. RAMIREZ,

Defendant and Appellant.

C071056

(Super. Ct. No. CR026649)

Defendant Diana L. Ramirez appeals following the revocation and termination of her probation. On appeal, defendant contends she is entitled to presentence custody credit for time she spent in custody as drug court sanctions, because her waiver of such custody credit was not knowing and intelligent. We disagree and shall affirm the judgment.

FACTUAL BACKGROUND

Defendant pleaded guilty to possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The trial court placed her on probation for two years under the provisions of Proposition 36, requiring participation in a drug treatment program, and suspended imposition of sentence.

Defendant violated her Proposition 36 probation and agreed to participate in a drug court rehabilitation program in lieu of admitting a third probation violation. In June 2010 the trial court sentenced her to a state prison term of three years, stayed execution of sentence, continued defendant on probation, and admitted defendant to participation in drug court.

In connection with her admission to drug court, defendant executed a “Lassen County Drug Court Participant Agreement” (the Agreement), which states in part: “**I UNDERSTAND THAT IF I AM REMOVED FROM THE PROGRAM AND SENTENCED[,] I AM NOT ENTITLED TO ANY SENTENCE CREDITS FOR SANCTIONS IMPOSED IN JAIL.** I understand that if I have any questions concerning sentencing, I should discuss this with my attorney (or the Court if I am not represented by an attorney) before starting the program. I understand I have the right to an attorney prior to signing this agreement.” (Emphasis in original.) Defendant placed her initials next to this paragraph and signed the Agreement. The Agreement was also signed by defendant’s attorney and by the court.

Defendant violated her probation while participating in drug court, and served 15 days in jail as drug court sanctions: two days for the first sanction; three days for the second sanction; four days for the third sanction; and six days for the fourth sanction. Thereafter, in April 2012 the trial court found defendant unamenable to treatment, and lifted the stay of execution on her three-year prison term.

Following a hearing on the custody credits due defendant, the court declined to award any presentence custody credit for time she spent in custody as drug court sanctions, based on defendant's waiver in the Agreement of "sentence credits for sanctions imposed" in the form of jail time.

DISCUSSION

Defendant contends the trial court erred in failing to award presentence custody credits for the time served as drug court sanctions, because her waiver of those credits was not knowing and intelligent. We disagree, and shall affirm the judgment.

Penal Code section 2900.5, subdivision (a)¹ provides that "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, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, credited to the period of confinement pursuant to Section 4019, . . . shall be credited upon his or her term of imprisonment"

But it is well established that "when a defendant knowingly and intelligently waives jail time custody credits after violating probation in order to be reinstated on probation and thereby avoid a prison sentence, the waiver applies to any future use of such credits should probation ultimately be terminated and a state prison sentence imposed." (*People v. Arnold* (2004) 33 Cal.4th 294, 298 (*Arnold*)). Such a rule, the *Arnold* court reasoned, is "consistent with law, logic, and sound public policy" (*id.* at p. 307), and a "defendant entering a straightforward and unconditional waiver of section 2900.5 credits has no reason to believe that the waiver is anything other than a waiver of

¹ Undesignated statutory references are to the Penal Code.

such credits for all purposes.” (*Arnold*, at p. 309.) “[S]uch waived credits may not be recaptured and applied against a subsequently imposed prison sentence in the event probation is revoked and a prison term imposed due to the defendant’s own unlawful or unsatisfactory conduct while on probation.” (*People v. Jeffrey* (2004) 33 Cal.4th 312, 317.)

“The gravamen of whether such a waiver is knowing and intelligent is whether the defendant understood [s]he was relinquishing or giving up custody credits to which [s]he was otherwise entitled under section 2900.5.” (*Arnold, supra*, 33 Cal.4th at p. 308.) Although “[t]he better practice is for sentencing courts to expressly admonish defendants who waive custody credits [citation], that such waivers will apply to any future prison term should probation ultimately be revoked and a state prison sentence imposed,” a sentencing court’s failure to include such an explicit advisement “will not . . . invalidate a . . . waiver by which the defendant is otherwise found to have knowingly and intelligently relinquished his or her right to custody credits under section 2900.5.” (*Arnold*, at p. 309.)

Here, the record does not support defendant’s claim that her waiver of custody credits was not knowing and intelligent. She signed the Agreement and initialed paragraph 22, in which she indicated her understanding that she is “not entitled to any sentence credits for sanctions imposed in jail” while participating in drug court. This provision is not (as defendant asserts) “buried on page four,” so that we might presume defendant missed its significance: It appears at the top of the page on which defendant placed her signature and is the only paragraph in the Agreement printed both in all capital letters and boldface type. Moreover, at the hearing at which the trial court received the Agreement and assigned defendant to drug court, defendant answered “yes” when asked by the court whether she had signed the Agreement, initialed each paragraph, and did so only “after discussing it and reading it with [her] attorney.” Defendant answered “no” when asked if she had “any questions” about the Agreement’s provisions. Defense

counsel confirmed to the court that her client agreed “to all the terms and conditions” of the Agreement. This exchange, together with the written Agreement, demonstrates a knowing and intelligent waiver of defendant’s right to custody credits for the period defendant served jail time as drug court sanctions. (See *People v. Black* (2009) 176 Cal.App.4th 145, 152-155.)

We reject defendant’s suggestion that her waiver should be deemed ineffective because it was not supported by a “quid pro quo,” i.e., a benefit for her agreement to forego custody credits for time served as sanctions during her participation in drug court. The Agreement shows that, in exchange for the opportunity to participate in drug court and avoid the otherwise immediate execution of her prison sentence, defendant agreed to each of the conditions that appear in its separately enumerated paragraphs, including the waiver of custody credits for jail time (if any) served as sanctions.

There was no error.

DISPOSITION

The judgment is affirmed.

_____ BUTZ _____, J.

We concur:

_____ BLEASE _____, Acting P. J.

_____ MAURO _____, J.