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

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTY JEAN GILLEY,

Defendant and Appellant.

C073226

(Super. Ct. Nos. 62118077 &
62072812A)

Appointed counsel for defendant Christy Jean Gilley has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*)). Defendant has separately challenged the trial court’s calculation of credits. We shall affirm the judgment without modification.

BACKGROUND

By a complaint filed November 19, 2012, and deemed an information on December 12, 2012, defendant was charged in case No. 62-118077 with receiving a stolen automobile (Pen. Code,¹ § 496, subd. (d)), and was alleged to have suffered three

¹ Further undesignated statutory references are to the Penal Code.

prior felony convictions (two for violations of § 496, subd. (a), in 2003 and 2005; and one for violation of § 530.5 [identity theft] in 2004) and to have served a prior prison term (§ 667.5, subd. (b)).

On November 21, 2012, a petition for summary revocation of probation was filed in case No. 62-072812A, alleging that the offense charged in case No. 62-118077 violated the five-year formal probation grant to defendant in 2008 following her conviction for two violations of section 530.5.

On January 29, 2013, the jury returned a verdict of guilty in case No. 62-118077. The evidence at trial showed that around 2:45 a.m. on November 15, 2012, in the parking lot of an apartment complex, a Roseville police officer located a stolen car. The trunk was full of clothing, mostly female. After talking with the apartment manager, the officer confronted defendant in her apartment with an item of apparel from the stolen car; she identified the apparel as hers. The officer obtained the keys to the stolen car from defendant's purse. Defendant gave conflicting stories about where she got the car.

Defendant waived her right to a jury trial on the probation violation (case No. 62-072812A) and submitted on the evidence already presented; the trial court found her to be in violation of probation. Defendant admitted the prior prison term allegation.²

On February 13, 2012, the trial court sentenced defendant to a total term of four years four months, to be served in county jail (§ 1170, subd. (h)). The court computed the term as follows: two years (the midterm) for the current conviction, plus one year consecutive for the prior prison term, plus two consecutive eight-month terms for the prior violations of section 530.5 on which defendant had previously been granted probation in case No. 62-072812A. The court imposed a \$280 restitution fine (§ 1202.4, subd. (b)), a \$40 court operations fee (§ 1468.5), and a \$30 conviction assessment fee

² The People stipulated that defendant had served only one prior prison term despite her three prior felony convictions.

(Gov. Code, § 70373). The trial court discussed credits at length with the parties,³ and ultimately continued the case for determination of credits, ordering an updated probation report regarding credit calculation.

In the interim, defendant filed a petition to recall and modify her sentence, arguing that the sentence imposed was illegal because the first sentencing judge (who had granted her probation in 2008) had calculated a suspended sentence which included concurrent sentencing on the section 530.5 violations, and the second sentencing judge should not have imposed consecutive sentences.

On March 13, 2013, the trial court granted the petition and resentenced defendant to a total term of three years eight months, calculated as follows: two years on the section 496, subdivision (d) conviction, plus one year consecutive for the prior prison term, plus eight months consecutive on the first of the section 530.5 violations in case No. 62-072812A and two years concurrent on the second of those violations. The court reimposed the fines and fees previously imposed.

The updated probation report calculated 343 days of actual custody in case No. 62-72812A (September 27, 2007 through September 11, 2008, minus eight days of leave),

³ They discussed the number of actual days served in case No. 62-072812A, which at the time probation had calculated at 232 days, and conduct credit for those 232 days, which the sentencing judge commented was not reflected in the report, but in fact was included in the amount of 116 days. They also discussed defendant's past participation in a residential drug treatment program, Teen Challenge, and whether she should receive credit for her time in the program. The prosecutor and the trial court jointly determined that defendant was released on OR into the program on September 11, 2008 and completed the program on November 13, 2009. However, they also agreed that defendant would not have been entitled to conduct credit for time spent in the program. Defense counsel did not make any argument or cite any authority to rebut that premise, and the record contains no additional discussion of actual credit for the program. Lastly, the trial court described the confusion in the current record regarding the end date of a prior prison term defendant had been serving, and ordered a "further credits memo" from probation to clear up all the issues that had arisen in the discussion.

giving her 170 days of conduct credit under the applicable formula. (We note that this is *considerably* more custody credit than was assigned to defendant by the probation report prepared for the February sentencing, which had calculated her actual custody time at 232 days and conduct credit at 116 days, as we described *ante* in fn. 3.) The update calculated the actual and conduct credits in case No. 62-118077 (the receiving stolen property case) at 112 and 112, respectively. It assigned no credit to time spent in Teen Challenge. Defense counsel did not object to these calculations, but only pointed out that defendant was entitled to an additional seven days actual and six days conduct credit in case No. 62-118077 because the report had only calculated credits through March 6th. The trial court accordingly awarded 237 days of presentence custody credits as to case No. 62-118077 (119 actual days and 118 conduct days) and adopted the report's unchallenged calculation of 527 days of credits as to case No. 62-072812A (357 actual days and 170 conduct days).

DISCUSSION

Counsel filed an opening brief that sets forth the facts of the case and requests 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.

Defendant filed a supplemental brief, asserting that “the suspended sentence [in the previous case] should have been imposed” rather than “resentencing” her, because the resentencing “cheated [her] out of over six months [of] credits.”

As we explained *ante*, the trial court *did*, in fact, impose the suspended sentence from the previous case when it revoked probation and sentenced defendant on the probation violation together with her current case. The court then *lowered* the sentence when resentencing on defendant's request to reflect the (concurrent) sentence previously indicated by the earlier sentencing judge. Defendant does not explain how this process

“cheated” her out of anything, and we cannot independently see that it did. To the contrary, the resentencing process stripped eight months from her custody time.

Further, her resentencing does not appear to have adversely affected defendant’s assignment of custody credits. In fact, as we have described, the trial court’s order for recalculation of credits by probation actually resulted in a substantial *increase* in both actual and conduct credits awarded in case No. 62-072812A. Defendant’s claim may stem from her counsel’s assertion at the February sentencing hearing that the year she spent in Teen Challenge entitled her to credits. But in order for her time served in a residential program to qualify as “custody” such that she would be entitled to credit under section 2900.5, subdivision (a), the program would need to be sufficiently restrictive--a factual determination that was neither sought nor made in defendant’s case. (See *People v. Ambrose* (1992) 7 Cal.App.4th 1917, 1922 [“The question of whether a particular facility should be considered sufficiently restrictive as to amount to custody constitutes a factual question”].) At no time did defense counsel object to the court’s calculation of credits or seek a hearing. Accordingly, to the extent that we are able to understand defendant’s claim that her resentencing “cheated” her out of credit, the record does not support it.

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

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

HOCH, J.