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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Trinity)

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE LOUIS BIGHAM,

Defendant and Appellant.

C074379

(Super. Ct. No. 12F0173)

Defendant Andre Louis Bigham pled no contest to driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)) and admitted three prior felony convictions for driving under the influence and a probation violation in exchange for a guarantee of local punishment and dismissal of other charges. The trial court suspended imposition of defendant’s sentence and granted him probation for five years, including 270 days in county jail,¹ imposed various conditions, fines, and fees, and awarded two days of

¹ The “order suspending imposition of sentence or suspending execution of sentence and granting probation” reflects defendant shall serve 240 days in county jail rather than the 270 days ordered by the trial court. We order correction of this clerical error. (See

presentence custody credits pursuant to Penal Code section 2900.5.² On appeal, defendant contends the trial court erred by not awarding two days of presentence conduct credit pursuant to section 4019, subdivision (f). The Attorney General agrees, and we concur.

Generally, when the only issue on appeal is an alleged miscalculation of or failure to award presentence custody credits, we must dismiss the appeal unless the defendant first moves the trial court to correct the error. (§ 1237.1; *People v. Clavel* (2002) 103 Cal.App.4th 516, 519.) Defendant wrote a letter to the trial court seeking a correction in the award of presentence credits, but the court declined to correct the error. Instead, the court issued a minute order stating, “Prob[ation] to address prior credit issue as directed by Appeals Court.” In this circumstance, a formal motion would serve no purpose. Therefore, we address defendant’s contention on the merits and conclude the trial court erred in not awarding presentence conduct credits to defendant.

Section 4019 credits apply to a minimum of four days in custody. Indeed, a defendant is entitled “to conduct credit if he or she is sentenced to, or otherwise committed for [i.e., jail, prison, probation condition or other qualifying commitment] a period of at least six days, without regard to the duration of presentence confinement.” (*People v. Dieck* (2009) 46 Cal.4th 934, 937, 940.) Here, defendant was sentenced to serve five years on probation and 270 days in county jail. This term exceeds the requisite custodial minimum of four days. Therefore, defendant is entitled to conduct credits for the two days he was incarcerated prior to sentencing.

People v. Freitas (2009) 179 Cal.App.4th 747, 750, fn. 2; accord *People v. Jones* (2012) 54 Cal.4th 1, 89.)

² Undesignated statutory references are to the Penal Code.

DISPOSITION

The judgment is modified to award defendant two days of presentence conduct credit. The trial court shall prepare an amended order reflecting this modification and correcting the jail term to 270 days. The trial court is directed to forward a certified copy of the amended order to the Trinity County Jail. As modified, the judgment is affirmed.

_____ HOCH _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ MURRAY _____, J.