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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRYL PIERRE CRAWFORD,

Defendant and Appellant.

D060532, D060534

(Super. Ct. Nos. RIF1101501,
RIF150644)

APPEALS from a judgment and order of the Superior Court of Riverside County, Raymond C. Youngquist, Judge. Judgment affirmed as modified; order affirmed.

In 2011, Darryl Pierre Crawford was sentenced to prison in case No. RIF1101501 (the 2011 case) after a jury found him guilty of two counts of attempted murder, two counts of assault with a deadly weapon, and one count of stalking, and also found true allegations he personally used a deadly weapon in the attempted murders. In a separate bench trial, the court found true allegations that Crawford had been convicted in 2010 in case No. RIF150644 (the 2010 case) of two counts of assault with a deadly weapon and

one count of making a criminal threat. The court used the 2010 convictions in fashioning an aggregate prison sentence in the 2011 case, and also entered a resentencing order on those convictions in the 2010 case.

Crawford appeals the judgment in the 2011 case and the resentencing order in the 2010 case, contending that in determining his aggregate prison sentence, the trial court (1) erroneously treated his convictions in the 2010 case as felonies rather than misdemeanors; (2) abused its discretion in not dismissing all of the 2010 conviction allegations; (3) erroneously imposed a full-term weapon use enhancement on one of the attempted murder convictions; (4) erroneously failed to award one additional day of presentence custody credit; and (5) violated his federal due process rights in making these multiple sentencing errors. Crawford also seeks correction of certain clerical errors in the abstract of judgment.

In the 2011 case, we modify the judgment to reduce the prison term imposed for the challenged weapon use enhancement and to award one additional day of presentence custody credit, and affirm the judgment as modified. We also order the abstract of judgment amended to reflect these modifications and to make various clerical corrections. In the 2010 case, we affirm the resentencing order.

I.

FACTUAL AND PROCEDURAL BACKGROUND

We affirmed Crawford's convictions and sentence in the 2010 case in a previous appeal (*People v. Crawford* (D060110, Apr. 9, 2012 [nonpub. opn.]), and he does not challenge the sufficiency of the evidence to support his 2011 convictions. We therefore

only briefly summarize the underlying facts and report more fully the sentencing aspects of the two cases, which are the focus of Crawford's appeals.

A. *Crawford's Convictions and Sentence in the 2010 Case*

While Crawford and his wife Cassandra were separated, Cassandra and Jermaine Mims went to Crawford's house to retrieve some of Cassandra's belongings. When Cassandra saw Crawford's car in the garage, she instructed Mims to drive away. Crawford then drove after them in his own car, reaching speeds up to 80 miles per hour on residential streets and swerving into them. While Cassandra and Mims were stopped at intersections, Crawford exited his car, threatened to kill Cassandra, and swung what looked like a crow bar at her. Cassandra and Mims eventually were able to elude Crawford and meet with police.

Based on the above-described events, on June 21, 2010, a jury found Crawford guilty of two counts of assault with a deadly weapon (an automobile) (Pen. Code, § 245, subd. (a)(1); further section references are to this code) and one count of making a criminal threat (§ 422).

At Crawford's request, the court held a hearing regarding alternate sentencing pursuant to section 1170.9.¹ A psychiatrist testified that Crawford suffered from PTSD

¹ Section 1170.9 authorizes a court to order certain criminal defendants to participate in a medical or psychiatric treatment program. To be eligible, the defendant must have been convicted of a criminal offense alleged to have been committed as a result of certain conditions, including posttraumatic stress disorder (PTSD), stemming from service in the United States military. (§ 1170.9, subd. (a).) To order placement in a treatment program, the court must determine that the defendant may be suffering from the alleged condition, determine that an appropriate treatment program exists, place the

as a result of his service in the Gulf War in 1990 and 1991 and that his PTSD contributed to the commission of the offenses of which he was convicted. The psychiatrist also testified that a one-year "inpatient residential program in California, where the patient is on lockdown," was available to treat Crawford's PTSD.

At a sentencing hearing on February 1, 2010, the court denied probation and sentenced Crawford pursuant to the determinate sentence law (DSL; § 1170 et seq.) to a total term of four years eight months in prison, consisting of consecutive terms of three years (the middle term) for the conviction of assault with a deadly weapon on Mims, one year (one-third the middle term) for the conviction of assault with a deadly weapon on Cassandra, and eight months (one-third the middle term) for the conviction of making a criminal threat. (§§ 18, subd. (a), 245, subd. (a)(1), 422, subd. (a), 1170.1, subd. (a).) The court stayed execution of the sentence for one year to allow Crawford to obtain treatment for PTSD at the inpatient facility for veterans described by the psychiatrist at the section 1170.9 hearing.

B. *Crawford's Convictions and Sentence in the 2011 Case*

In February 2011, Crawford was mistakenly released from custody, and did not report to the inpatient facility for treatment of his PTSD. Within days of his release, Crawford made threatening telephone calls to Cassandra and went to her apartment complex to inquire where she lived. He also engaged Cassandra in another high-speed

defendant on probation, and obtain the defendant's agreement to participate. (*Id.*, subd. (b).) A defendant granted probation and committed to a residential treatment program earns credits against his sentence for actual time spent in the program. (*Id.*, subd. (e).)

automobile chase, this time while she was traveling with her fiancé Donald Searcy. Over the course of four miles, Crawford rammed his car into Cassandra's car at least 12 times, extensively damaging her car and disabling his own. Cassandra and Searcy were eventually able to get away from Crawford, drive to a store and summon police.

Based on the above-described events, a jury found Crawford guilty of two counts of attempted murder (§§ 187, subd. (a), 664, subd. (a)), two counts of assault with a deadly weapon (§ 245, subd. (a)(1)), and one count of stalking (§ 646.9, subd. (a)). The jury also found true allegations that Crawford personally used a deadly weapon (an automobile) in committing the assaults. (§ 12022, subd. (b)(1).)

In a separate bench trial, the court found true allegations that Crawford had three prior serious felony convictions in the 2010 case. Crawford later moved the trial court to dismiss those allegations "in furtherance of justice." (§ 1385, subd. (a).) The court dismissed the allegations concerning Crawford's convictions of making a criminal threat and assaulting Mims with a deadly weapon, but refused to dismiss those concerning the conviction of assaulting Cassandra with a deadly weapon.

The court sentenced Crawford to prison for 18 years for the conviction of the attempted murder of Cassandra, selecting the upper term of nine years (§ 664, subd. (a)) and doubling it under the "Three Strikes" law based on Crawford's 2010 conviction of assaulting Cassandra with a deadly weapon (§§ 667, subd. (c)(1), 1192.7, subd. (c)(31)). The court added a consecutive term of one year for Crawford's personal use of a deadly weapon in the attempted murder. (§ 12022, subd. (b)(1).)

The court sentenced Crawford to prison for a consecutive term of four years eight months for the conviction of the attempted murder of Searcy, selecting one-third the middle term of seven years, i.e., two years four months, under the DSL (§§ 664, subd. (a), 1170.1, subd. (a)), and doubling it under the Three Strikes law based on Crawford's 2010 conviction of assaulting Cassandra with a deadly weapon (§§ 667, subd. (c)(1), 1192.7, subd. (c)(31)). The court added a consecutive term of one year for Crawford's personal use of a deadly weapon in the attempted murder. (§ 12022, subd. (b)(1).)

For the two convictions of assault with a deadly weapon, the court imposed concurrent prison terms of six years each, selecting the middle term of three years and doubling it under the Three Strikes law based on Crawford's 2010 conviction of assaulting Cassandra with a deadly weapon (§§ 245, subd. (a)(1), 667, subd. (c)(1), 1192.7, subd. (c)(31)), but staying execution of these terms pursuant to section 654.

For the stalking conviction, the court imposed a concurrent prison term of four years, selecting the middle term of two years and doubling it under the Three Strikes law based on Crawford's 2010 conviction of assaulting Cassandra with a deadly weapon (§§ 18, subd. (a), 646.9, subd. (a), 667, subd. (c)(1), 1192.7, subd. (c)(31)), but staying execution of this term pursuant to section 654.

The court also imposed a consecutive prison term of five years for Crawford's 2010 conviction of assaulting Cassandra with a deadly weapon. (§ 667, subd. (a).) Although each of Crawford's 2010 convictions qualified as a serious felony (see § 1192.7, subd. (c)(31), (38)), the parties stipulated that only one five-year enhancement could be imposed because the charges underlying those convictions had not been

"separately brought and tried." (§ 667, subd. (a); see *In re Harris* (1989) 49 Cal.3d 131, 136.)

Therefore, the total prison term imposed for the 2011 convictions was 29 years eight months.

C. *The Resentencing on Crawford's Convictions in the 2010 Case*

As part of the aggregate prison sentence imposed in the 2011 case, the trial court also resentenced Crawford on his 2010 convictions. The court imposed consecutive prison terms of one year each (one-third the middle term) for the two convictions of assault with a deadly weapon (§§ 245, subd. (a)(1), 1170.1, subd. (a)), but stayed execution of one of those terms pursuant to section 654. The court also imposed a consecutive prison term of eight months (one-third the middle term) for the conviction of making a criminal threat. (§§ 18, subd. (a), 422, subd. (a), 1170.1, subd. (a).) The parties stipulated Crawford had already served this portion of his sentence based on credits for presentence custody in the 2010 case.

II.

DISCUSSION

Crawford challenges the aggregate prison sentence imposed in the 2011 case on the following grounds: (1) the court erred by sentencing him as a second strike offender under the Three Strikes law (§ 667, subs. (b)-(i)), and by imposing consecutive subordinate prison terms for the 2010 convictions, because those convictions were misdemeanors, not felonies; (2) the court abused its discretion by not dismissing the allegations concerning all of the 2010 convictions; and (3) the court erred by imposing a

full-term weapon use enhancement instead of one-third the enhancement on the conviction of the attempted murder of Searcy. Crawford also claims entitlement to one additional day of presentence custody credit and seeks correction of several clerical errors in the abstract of judgment. Finally, Crawford complains the court's multiple sentencing errors violated his federal constitutional right to due process of law. We shall address these claims of error in turn.

A. *In Sentencing Crawford in the 2011 Case, the Court Properly Treated His 2010 Convictions as Felonies, Not Misdemeanors*

Crawford contends the court in the 2011 case committed sentencing error by treating his 2010 convictions of assault with a deadly weapon and making a criminal threat as felonies rather than misdemeanors. According to Crawford, the offenses in the 2010 case were "wobblers" that were "automatically" rendered misdemeanors when the initial sentencing court granted a "conditional sentence," because such a sentence may be granted for a misdemeanor conviction but not for a felony conviction. We reject this argument because, as we shall explain, the initial sentencing court imposed a state prison term on each of the convictions and thereby rendered them felonies, not misdemeanors.

A "wobbler" is an offense that may be charged and punished as either a felony or a misdemeanor. (*People v. Statum* (2002) 28 Cal.4th 682, 699.) The offenses of assault with a deadly weapon and making a criminal threat both qualify as wobblers. (§§ 245, subd. (a)(1), 422, subd. (a); *People v. Barkley* (2008) 166 Cal.App.4th 1590, 1595 (*Barkley*); *People v. Queen* (2006) 141 Cal.App.4th 838, 842 (*Queen*).) Under the law in effect at the time of Crawford's initial sentencing in the 2010 case, when a defendant was

convicted of a wobbler, the conviction was deemed a felony unless and until the defendant was sentenced to something other than a state prison term. (§ 17, former subd. (b); *People v. Banks* (1959) 53 Cal.2d 370, 381-382; *People v. Moomey* (2011) 194 Cal.App.4th 850, 857.) A wobbler became a misdemeanor only when the sentencing court imposed a fine or a county jail term, or designated the offense a misdemeanor. (§ 17, former subd. (b); *Moomey*, at p. 857; *People v. Martinez* (1998) 62 Cal.App.4th 1454, 1464.) Thus, if the court imposed a state prison term, the wobbler was a felony. (§ 17, former subd. (a); *People v. Stevens* (1996) 48 Cal.App.4th 982, 987 (*Stevens*).)²

Here, the two counts of assault with a deadly weapon and one count of making a criminal threat of which Crawford was convicted in 2010 were charged as felonies. After the jury found Crawford guilty of those charges, the trial court sentenced him to three

² We note that for a defendant convicted of a wobbler and sentenced after the operative date of the 2011 realignment legislation addressing public safety (Stats. 2011, ch. 15), imposition of a county jail term rather than a state prison term would not necessarily mean the wobbler was a misdemeanor rather than a felony. Under the realignment legislation, some crimes have been made alternately punishable by imprisonment *in county jail pursuant to section 1170, subdivision (h)*, or imprisonment *in county jail for not more than one year*. (See, e.g., §§ 244.5, subd. (b), 271a, 489, subd. (b).) If such crimes are punished by imprisonment in county jail pursuant to section 1170, subdivision (h), they are considered felonies, not misdemeanors, even though imprisonment is in county jail rather than in state prison. (§ 17, subds. (a), (b)(1).) The realignment legislation does not affect the determination of whether Crawford's 2010 convictions were felonies or misdemeanors, however, for two independent reasons. First, neither of the offenses of which he was convicted in 2010 — assault with a deadly weapon and making a criminal threat — is punishable pursuant to section 1170, subdivision (h). (See §§ 245, subd. (a)(1), 422, subd. (a).) Second, Crawford was initially sentenced in August 2010, more than one year before the realignment legislation became applicable "prospectively to any person sentenced on or after October 1, 2011." (§ 1170, subd. (h)(6).)

consecutive state prison terms pursuant to the DSL. Under the rules stated above, therefore, the 2010 convictions were felonies, not misdemeanors.

Contrary to Crawford's claim on appeal, the 2010 convictions were not transformed into misdemeanors by the court's stay of execution of the prison sentence for one year to allow Crawford to undergo inpatient treatment for PTSD.³ "Imposition of a prison term, whether or not suspended, rendered [each] offense a felony." (*People v. Wood* (1998) 62 Cal.App.4th 1262, 1267.) Moreover, the stay did not constitute a "conditional sentence," which is authorized for a misdemeanor but not a felony. (§§ 1203, subd. (a), 1203b; *People v. Taylor* (2007) 157 Cal.App.4th 433, 437.) A conditional sentence requires "the suspension of the imposition or execution of a sentence

³ Before the two appeals were consolidated and we were made fully aware of Crawford's convictions and sentence in the 2011 case, we had requested supplemental briefing from the parties on the propriety of the stay of execution of the prison sentence issued in the 2010 case. In response to our request, Crawford contends the stay was proper as part of a "*de facto* conditional sentence." The People disagree, contending the stay was unauthorized because the trial court denied probation and imposed a prison sentence. We have serious doubts about the propriety of the stay of execution of the sentence and the related order placing Crawford in a program to treat his PTSD, because a stay of execution of sentence and placement of a defendant in a treatment program is authorized only if the court grants probation (§ 1170.9, subd. (b); *People v. Ferguson* (2011) 194 Cal.App.4th 1070, 1089), which the initial sentencing court denied. We need not, and do not, resolve the parties' dispute over the propriety of the stay, however, for two reasons. First, any error in staying execution of the prison sentence was invited, because the prosecutor and Crawford agreed to the stay at the sentencing hearing in the 2010 case, and neither party raised any objection on the appeal in that case. (See, e.g., *People v. Vargas* (2001) 91 Cal.App.4th 506, 561 [party may not complain of invited error].) Second, the stay was terminated when Crawford was sentenced in the 2011 case, and that termination rendered the propriety of the stay moot. (See, e.g., *Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal.App.4th 139, 144 [expiration of order granting temporary relief moots appeal challenging order].)

and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer." (§ 1203, subd. (a), italics added.) The court in the 2010 case suspended execution of the prison sentence; but it did not order Crawford released in the community or specify conditions which, if violated, would result in revocation of his release. Rather, the court ordered Crawford to undergo a year of inpatient treatment at a "lockdown" facility, for which he would be given credit against the prison sentence the court had imposed. Thus, because the initial sentencing court did not grant Crawford a conditional sentence, we reject his argument that imposition of such a sentence rendered his 2010 convictions misdemeanors rather than felonies.

A different conclusion is not required by *People v. Glee* (2000) 82 Cal.App.4th 99, on which Crawford principally relies. In *Glee*, the prosecutor informed the defendant, before he pled guilty to a wobbler offense, that his sentence would be one year in county jail. The trial court, after accepting the guilty plea, "suspended proceedings, granted summary probation, ordered [the defendant] to serve one year in the county jail and directed that probation be terminated upon completion of the jail term." (*Id.* at p. 105.) Under these circumstances, the *Glee* court held the punishment imposed by the trial court "automatically rendered the crime a misdemeanor." (*Ibid.*) Here, by contrast, the prosecutor charged the offenses in the 2010 case as felonies, and never informed Crawford he would be sentenced to a jail term. Also, the initial sentencing court did not suspend proceedings before imposing sentence; expressly denied probation; never mentioned a jail term; and imposed consecutive prison terms on all of Crawford's

convictions. Thus, unlike *Glee*, the record here contains no indication whatsoever that the initial sentencing court ever intended to impose a misdemeanor sentence. *Glee* therefore does not support Crawford's contention that his 2010 convictions were misdemeanors as a matter of law. (See *Barkley, supra*, 166 Cal.App.4th at p. 1596 [distinguishing *Glee* on ground trial court "obviously intended for the conviction to be a felony"]; *People v. Soto* (1985) 166 Cal.App.3d 770, 775 [concluding wobbler was a felony when trial court stated it did not intend to make offense a misdemeanor when it suspended proceedings and granted probation, and court imposed prison term when it subsequently revoked probation].)

We are also not persuaded by Crawford's argument, only weakly urged, that language in certain postjudgment minute orders in the 2010 case indicates his convictions were misdemeanors rather than felonies. The orders cited by Crawford state, "Misdemeanor trailing felony case RIF1101501." The use of the word "misdemeanor" appears to be a clerical error, however, because numerous subsequent minute orders state simply, "Matter Trailing Case RIF1101501." In any event, the determination of whether a wobbler in a prior case was a felony or a misdemeanor does not turn on a brief procedural minute entry. Rather, "when a crime is punishable by imprisonment in the state prison, or in the discretion of the court by imprisonment in the county jail, the actual punishment ordered is the test." (*Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 137; but see fn. 2, *ante* [discussing how some felonies are now punishable by imprisonment in county jail pursuant to the 2011 realignment legislation].) Here, the court imposed state prison terms on each of Crawford's convictions in the 2010 case,

making them felonies, not misdemeanors. (§ 17, former subd. (a); *Stevens, supra*, 48 Cal.App.4th at p. 987.)

One consequence of our conclusion that Crawford's 2010 convictions were felonies is that the court in the 2011 case properly sentenced him as a second strike offender. As noted earlier, the court in the 2011 case dismissed the allegations concerning the 2010 convictions of assault with a deadly weapon on Mims and making a criminal threat against Cassandra, but refused to dismiss the allegations concerning the 2010 conviction of assault with a deadly weapon on Cassandra. "The determination of whether a prior conviction is a prior felony conviction for purposes of [the Three Strikes law] shall be made upon the date of that prior conviction *and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor.*" (§ 667, subd. (d)(1), italics added.) Crawford's 2010 conviction of assault with a deadly weapon on Cassandra was not automatically converted to a misdemeanor, and thus constituted a strike, because the initial sentencing court imposed felony punishment of one year in state prison. (§ 17, former subd. (a); *Queen, supra*, 141 Cal.App.4th at p. 843.) The court in the 2011 case therefore properly used that 2010 conviction to double the prison terms imposed on the 2011 convictions under the Three Strikes law. (See § 667, subd. (e)(1).)

The court in the 2011 case also properly resentenced Crawford on his 2010 convictions. As we have explained, the 2010 convictions were all felonies. Under the DSL, when a defendant is sentenced consecutively for multiple felony convictions that occurred in two separate proceedings, the second court designates the longest prison term

as the principal term and then treats every other consecutive term as a subordinate term for which the sentence is one-third the middle term for the offense. (§ 1170.1, subd. (a); *People v. Baker* (2002) 144 Cal.App.4th 1320, 1328-1329.) Here, in determining Crawford's aggregate prison sentence, the court correctly designated the nine-year term for one of the attempted murder convictions as the principal term, and then added subordinate consecutive terms of one-third the middle term for each of the other 2011 convictions and for the three convictions in the 2010 case.

In sum, we hold Crawford's 2010 convictions were felonies, not misdemeanors. We further hold that in sentencing Crawford in the 2011 case, the court properly used his 2010 conviction of assault with a deadly weapon on Cassandra as a strike to double the prison terms imposed on his 2011 convictions, and also properly resentenced him under the DSL on the 2010 convictions.

B. *The Trial Court Did Not Abuse Its Discretion When It Refused to Dismiss All of the Allegations Concerning Crawford's 2010 Convictions*

Crawford complains that when the court sentenced him on his 2011 convictions, it abused its discretion by dismissing the allegations concerning only two of his convictions in the 2010 case, not all three. According to Crawford, remand for resentencing is required because the court's "calculus did not include the state's mistake in releasing [him] before he received the court-ordered inpatient treatment that was part and parcel to his conditional sentence, or the chain reaction between the improper release, [his] resultant untreated PTSD, and his subsequent commission of the additional offenses." This argument has no merit.

As an initial matter, we note Crawford has not preserved this claim for appellate review. In moving the trial court to dismiss the 2010 conviction allegations, Crawford did not argue that the state was responsible for his erroneous release before treatment or that there was a "chain reaction" linking the release to Crawford's commission of the current offenses. Nor did he present any facts in his motion or at the hearing to support these arguments. Although "the court must consider evidence *offered by the defendant* in support of his contention that it would be in furtherance of justice to strike a prior conviction, the court is under no duty to gather all relevant evidence that may or may not bolster the defendant's argument for relief. . . . Furthermore, because a defendant's failure to invite the court to strike a prior conviction . . . forfeits his right to raise the issue on appeal, it follows that unless the defendant presents evidence in support of his request, he forfeits his right to complain that the court's denial of . . . relief did not take into account that evidence." (*People v. Lee* (2008) 161 Cal.App.4th 124, 131.)

Even if Crawford had not forfeited his claim that the trial court abused its discretion by not dismissing all his 2010 conviction allegations, we would reject the claim on the merits. A trial court may dismiss prior felony conviction allegations in cases prosecuted under the Three Strikes law when dismissal is "in furtherance of justice." (§ 1385, subd. (a); see *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) In deciding whether to dismiss prior conviction allegations, the court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in

whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*)). We review a trial court's decision whether or not to dismiss prior felony conviction allegations for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 373, 375 (*Carmony*); *Romero*, at p. 531.) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Carmony*, at p. 377.) For reasons we shall explain, we discern no abuse of discretion in this case.

At the sentencing hearing, the court stated that in spending approximately 15 hours on the sentencing issues in the case, it had considered Crawford's sentencing memorandum, the trial transcripts, the probation report, a psychiatric report and several letters that had been written on Crawford's behalf. Among the facts weighing in favor of dismissal of the allegations concerning Crawford's 2010 convictions, the court identified the occurrence of the 2010 crimes in a single course of conduct, the relationship of the 2010 and 2011 crimes to Crawford's PTSD, and the absence of physical injury to any of the victims. (Cf. *People v. Garcia* (1999) 20 Cal.4th 490, 503 (*Garcia*) [no abuse of discretion in dismissing prior conviction allegations as to one current count but not another when prior convictions "arose from a single period of aberrant behavior," crimes were related to defendant's drug addiction, and defendant's criminal history included no actual violence].) Among the facts weighing against dismissal, the court identified "the potential for great bodily harm" to the victims (*People v. McGlothin* (1998) 67 Cal.App.4th 468, 475), the similarity of the two sets of crimes (*Williams, supra*, 17

Cal.4th at p. 163; *People v. Strong* (2001) 87 Cal.App.4th 328, 344) and Crawford's refusal to undergo the court-ordered treatment for the psychiatric condition (PTSD) that led to the crimes (cf. *Carmony, supra*, 33 Cal.4th at p. 378 [recidivist who did not address substance abuse problem was within spirit of Three Strikes law]; *Williams*, at p. 163 [same]). After balancing these aggravating and mitigating facts, the trial court decided not to "write off" Crawford's "horrible conduct," which constituted a danger to Cassandra and society, but to "extend[] [him] some leniency." The court therefore dismissed only two of Crawford's three convictions in the 2010 case, and thereby treated him as a second-strike offender rather than a third-strike offender in the 2011 case.

On this record, the court's decision was "neither irrational nor arbitrary and [did] not constitute an abuse of its discretion." (*Carmony, supra*, 33 Cal.4th at p. 379; see *Garcia, supra*, 20 Cal.4th at p. 500 [trial court has discretion to dismiss some but not all prior conviction allegations]; *People v. Bishop* (1997) 56 Cal.App.4th 1245, 1250-1251 [upholding decision to dismiss allegations concerning two of defendant's three prior convictions based on trial court's weighing of aggravating and mitigating factors].) Rather, because "the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the [Three Strikes] law," we must affirm its decision. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310; accord, *Carmony*, at p. 378.)

C. *The Trial Court Erred by Imposing a Full-term Weapon Use Enhancement on Crawford's Conviction of the Attempted Murder of Searcy*

Crawford contends the trial court should have imposed a four-month weapon use enhancement on his conviction of the attempted murder of Searcy rather than the full enhancement of one year. The People agree, and so do we. Where, as here, a defendant is convicted of multiple felonies for which consecutive prison terms are imposed, subordinate terms include one-third the term imposed for applicable enhancements. (§ 1170.1, subd. (a); *People v. Hill* (2004) 119 Cal.App.4th 85, 91.) The challenged enhancement thus must be reduced to four months, which is one-third of the one-year term prescribed by section 12022, subdivision (b)(1).

D. *Crawford Is Entitled to One Additional Day of Presentence Custody Credit*

Crawford claims entitlement to one additional day of credit against his prison sentence in the 2011 case for time spent in actual custody before sentencing. The People concede the point. Although Crawford did not move the trial court to correct its miscalculation and award the additional day of credit as is ordinarily required (see § 1237.1), we modify the judgment to award the additional day (see *People v. Donan* (2004) 117 Cal.App.4th 784, 792-793 [ordering additional presentence credits when trial court miscalculated credits and defendant raised other issues on appeal]).

E. *Clerical Errors in the Abstract of Judgment Must Be Corrected*

Crawford contends the abstract of judgment states incorrect amounts for the restitution and parole revocation fines ordered by the court, and asks us to order correction. The People concede corrections are in order. We agree.

At the sentencing hearing in the 2011 case, the court imposed a restitution fine of \$500 under section 1202.4 and a parole revocation restitution fine of the same amount under section 1202.45. The abstract of judgment lists the amount of these fines as \$10,000, however. Conflicts between the oral pronouncement of judgment and the abstract of judgment are presumed clerical and generally are resolved in favor of the oral pronouncement. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We thus order correction of the abstract of judgment to state the amount of each fine is \$500.

The parties also agree the abstract of judgment incorrectly states a consecutive prison term was imposed on Crawford's conviction of assault with a deadly weapon on Cassandra (count 3). The trial court imposed a concurrent prison term of six years for that conviction, and then stayed its execution under section 654. The abstract therefore should be amended to state the length of the prison term imposed, and to indicate that the term is both concurrent and stayed. We note the abstract also fails to list the length of the prison terms imposed on Crawford's convictions of assault with a deadly weapon on Searcy (count 4) and stalking (count 5), and fails to indicate these terms were ordered to be served concurrently. The abstract must be amended to include this information.

F. *The Sentencing Errors Did Not Violate Crawford's Federal Due Process Rights*

Crawford finally contends the numerous sentencing errors of which he complains violated his federal constitutional right to due process of law. (See U.S. Const., 14th Amend.) We disagree. We have rejected Crawford's primary claim of sentencing error (i.e., that the court in the 2011 case incorrectly treated the 2010 convictions as felonies rather than misdemeanors), and we are ordering correction of the two sentencing errors

that did occur (i.e., imposition of an incorrect term for the weapon use enhancement on the conviction of the attempted murder of Searcy, and award of an incorrect amount of presentence custody credits). Correction of these errors on appeal is proper, and their occurrence was "not so fundamentally unfair as to signify a due process violation." (*People v. Reyes* (1989) 212 Cal.App.3d 852, 857.)

DISPOSITION

The judgment in case No. RIF1101501 is modified to reduce the term of the enhancement on Crawford's conviction of the attempted murder of Searcy (count 2) from one year to four months, thereby reducing the aggregate prison term from 29 years eight months to 29 years. The judgment is also modified to award Crawford one additional day of actual custody credit, thereby increasing actual custody credits from 195 to 196 days and total presentence credits from 224 to 225 days. As so modified, the judgment is affirmed.

On remand, the trial court shall prepare an amended abstract of judgment in case No. RIF1101501 to (1) reflect the above modifications to the judgment; (2) state the length of the prison terms imposed on the convictions of assault with a deadly weapon and stalking (counts 3 [six years], 4 [six years] & 5 [four years]), and indicate these terms are concurrent and stayed pursuant to section 654; and (3) correct the amounts of restitution and parole revocation restitution fines (§§ 1202.4, subd. (b), 1202.45) to \$500 each. The court shall also send a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

The postjudgment sentencing order in case No. RIF150644 is affirmed.

IRION, J.

WE CONCUR:

MCINTYRE, Acting P. J.

AARON, J.