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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

YEN NTOC LE,

Defendant and Appellant.

D060773

(Super. Ct. No. SCE308289)

APPEAL from a judgment of the Superior Court of San Diego County, Lantz Lewis, Judge. Affirmed and remanded with directions.

Following a bench trial, Yen Ntoc Le (Le) was convicted of felony battery by gassing (Pen. Code,¹ § 243.9, subd. (a)), and sentenced to prison for four years. Le was granted 222 days of custody credits as follows: 148 actual days plus 74 good time credit days. The trial court imposed a Government Code section 29550.1 booking fee.

¹ All statutory references are to the Penal Code unless otherwise stated.

Le contends the trial court erroneously calculated her custody credits, and there is no substantial evidence of her ability to pay the booking fee. We affirm the judgment of conviction and the imposition of the booking fee, but remand with directions.

BACKGROUND

On January 25, 2011, while Le was in custody at the county jail due to a parole violation, she tried to bolt down the hall, but an escorting deputy restrained her. Le spat on his face. She remained in custody at the county jail until sentencing on October 13, 2011, except for a 12-day psychiatric hospitalization in May 2011.

DISCUSSION

I.

The People concede and we agree that the trial court miscalculated Le's custody credits, and failed to award her all the custody and good time credits she was entitled.

In all felony convictions, when the defendant has spent time in any custody, including custody in a prison or hospital, all days of such custody shall be credited upon her term of imprisonment. (§ 2900.5, subd. (a).) Additionally, Le was entitled to "good time credit" under section 4019.

Le was confined in county jail from her January 25, 2011 arrest until May 5, 2011, when she was committed to a psychiatric hospital. She remained at the hospital until May 17, 2011, and thereafter was transferred to county jail until her October 13, 2011 sentencing. Le is entitled to receive credit for 262 actual custody days, which is the total number of days between January 25, 2011 and October 13, 2011.

Le also is entitled to good time credit except for her 12 days of psychiatric hospitalization. (*People v. Waterman* (1986) 42 Cal.3d 565, 569.) The parties agree she did not receive those credits.

II.

Le correctly notes that the booking fee was imposed under Government Code section 29550.1; nonetheless, she relies on a different section of the Government Code, section 29550.2, for her contention the court was required to determine her ability to pay the booking fee. The People contend Le forfeited this claim by failing to object to the imposition of the booking fee in the trial court.² The People alternatively contend the record contains enough evidence from which Le's ability to pay may be inferred.

After briefing in this case was completed, *People v. Almanza* (2012) 207 Cal.App.4th 269 was decided and held that by its plain language, Government Code section 29550.1 does not contain a requirement that the court determine the defendant's ability to pay the booking fee. (*Almanza, supra*, at p. 273) We follow that case, and conclude that Le's contention fails.

² Although the parties briefed the separate issue of whether defendant forfeits a claim that he is unable to pay a booking fee by failing to object to the fee, we need not address that issue that is currently pending in the California Supreme Court. (*People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513.)

DISPOSITION

We affirm the judgment of conviction and the imposition of the booking fee, but remand for the trial court to recalculate Le's custody credits, amend the abstract of judgment accordingly, and forward a certified copy to the California Department of Corrections and Rehabilitation.

O'ROURKE, J.

WE CONCUR:

McDONALD, Acting P. J.

McINTYRE, J.