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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ARDEN AGUILERA MONTALVO,

Defendant and Appellant.

D064314

(Super. Ct. No. SCD245566)

APPEAL from a judgment of the Superior Court of San Diego County, Jeffrey F. Fraser, Judge. Affirmed.

Steve J. Carroll, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for the Plaintiff and Respondent.

INTRODUCTION

Arden Aguilera Montalvo pleaded guilty to assault with force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)). The court sentenced him to a

negotiated term of two years in prison. The court awarded him 81 days of presentence custody credit, consisting of 41 days of actual custody credit and 40 days of conduct credit.

Montalvo appeals. His appointed appellate counsel filed a brief requesting we independently review the record for error. (See *People v. Wende* (1979) 25 Cal.3d 436, 441-442.) Having done so and having identified no reasonably arguable appellate issues, we affirm the judgment.

### BACKGROUND

Montalvo and two accomplices beat up a man. All of the parties were incarcerated at the time. Montalvo was incarcerated because he was serving a sentence in another, unrelated case. His sentence in the other case ended two days after he pleaded guilty in this case. Following *In re Rojas* (1979) 23 Cal.3d 152, 154, which held a criminal defendant may not receive presentence custody credit for time spent simultaneously serving a sentence in a prior unrelated case, the court limited its award of presentence custody credit to the time Montalvo spent in custody after he completed his sentence in the other case.

### DISCUSSION

Appointed appellate counsel filed a brief summarizing the facts and proceedings below. Counsel presented no argument for reversal and instead requested we review the record for error as mandated by *People v. Wende, supra*, 25 Cal.3d at pages 441-442. Consistent with *Anders v. California* (1967) 386 U.S. 738, 744, counsel identified the

following possible, but not reasonably arguable issue: Whether Montalvo was entitled to additional presentence custody credit?

We granted Montalvo permission to file a supplemental brief on his own behalf. He did not do so.

As requested by counsel, we reviewed the record for error and did not find any reasonably arguable appellate issues. Montalvo has been competently represented by counsel on this appeal.

#### DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

O'ROURKE, J.