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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

UBALDO ENRIQUE HERNANDEZ,

Defendant and Appellant.

D067543

(Super. Ct. No. JCF31515)

APPEAL from an order of the Superior Court of Imperial County, Poli Flores, Jr.,
Judge. Reversed and remanded with directions.

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

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, and Eric A. Swenson and Felicity
Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Ubaldo Enrique Hernandez appeals the trial court's order denying presentence custody credit under Penal Code section 2900.5¹ in one of two cases, for a period of time during which Hernandez was in custody on both cases. This case turns on whether Hernandez was concurrently in custody in both matters for the same conduct, in which case he would be entitled to presentence custody credit in both. (*People v. Bruner* (1995) 9 Cal.4th 1178, 1194-1195 (*Bruner*).) Based on the particular facts presented, we conclude that he was. We therefore reverse the trial court's December 11, 2014 order denying presentence custody credit. We also remand the cause to the trial court to correct a clerical error in the minutes dated October 23, 2013.

FACTUAL AND PROCEDURAL BACKGROUND

In October 2013, Hernandez entered a no contest plea to a charge of assault under section 245, subdivision (a)(4)² in case No. JCF31515. The court sentenced Hernandez to four years in state prison, suspended the sentence, and placed him on three years of formal probation. Among the conditions of probation were that Hernandez participate in counseling services; abstain from drug possession and use; "[r]eport as directed to the probation officer"; "[r]eport to the [p]robation [d]epartment within 48 hours after release from custody"; and notify the probation department of any change of address, telephone

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

² Section 245, subdivision (a)(4) provides: "Any person who commits an assault upon the person of another by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment."

number, and employment. At the time, Hernandez was also on postrelease community supervision (PRCS) in case No. SPV00283, which pertained to a prior domestic violence conviction. The PRCS conditions also included the aforementioned terms.

In June 2014, the probation officer filed concurrent petitions to revoke Hernandez's probation and PRCS. Both petitions were based on four alleged violations in April and May 2014: (1) failing to maintain enrollment in services, including drug and alcohol counseling; (2) admitting to methamphetamine use and testing positive for methamphetamine and marijuana; (3) failing to report to the probation officer as directed on April 25, April 28, and May 7; and (4) failing to notify the probation officer of changes in address, phone number, or employment. In addition to those four grounds, the PRCS revocation petition alleged that Hernandez failed to report to the probation department after a 10-day "flash incarceration" from March 27 to April 7, 2014, in violation of the condition that he "[r]eport to the [p]robation [d]epartment within 48 hours after release from custody." Although that alleged violation would also have violated the identically worded probation condition, it was listed only in the PRCS revocation petition, and not in the probation revocation petition.

On June 17, 2014, the trial court summarily revoked Hernandez's probation and PRCS and issued bench warrants for Hernandez's arrest. Hernandez was arrested in Las Vegas, Nevada on July 30, 2014, and extradited to California in August 2014.

The court held a joint revocation hearing for both cases in September 2014. Hernandez admitted the allegations in both revocation petitions, and the court found Hernandez in violation of his probation and PRCS. At the joint sentencing hearing on

October 14, 2014, the court reinstated Hernandez's probation in case No. JCF31515, indicating that Hernandez would not be entitled to credit for the 77 days that he had spent in custody between July 30 and October 14, 2014, if he were to be sentenced for probation revocation at a later date. The court terminated Hernandez's PRCS in case No. SPV00283 and sentenced him to 180 days in county jail with 173 days of credit for time served, consisting of 87 days of custody credit (including the 77 days between July 30 and October 14, 2014) and 86 days of behavioral credit.

In November 2014, the probation officer filed a petition to revoke Hernandez's probation in case No. JCF31515, alleging that Hernandez failed to attend classes and counseling sessions in October and November 2014 and that he had tested positive for methamphetamine and marijuana. At the probation revocation hearing on December 11, 2014, the trial court found Hernandez in violation of his probation. The court ordered Hernandez to serve his suspended four-year sentence. Hernandez's counsel objected to the trial court's earlier ruling denying presentence custody credit for the 77-day period from July 30 to October 14, 2014. The trial court deferred the issue and set a hearing on credit calculation.

At the credit calculation hearing, Hernandez's counsel argued that Hernandez was entitled to credit from July 30 to October 14, 2014, because during that period, he was in custody on both case Nos. JCF31515 and Case No. SPV00283. The trial court deemed the objection to be a motion for reconsideration, which it denied.

Hernandez filed a timely notice of appeal.

DISCUSSION

I

Hernandez argues that the trial court erred when it declined to award presentence custody credit in case No. JCF31515 for his incarceration between July 30 and October 14, 2014. The trial court applied presentence credit for this period only to case No. SPV00283 (the PRCS case). Hernandez contends that the probation revocation and PRCS revocation were based on the same conduct, and that he should therefore receive dual credit. The People maintain that Hernandez forfeited this argument by failing to object at the sentencing hearing on October 14, 2014. The People also contend that Hernandez is not entitled to presentence custody credit under section 2900.5. For the reasons discussed below, we conclude that Hernandez is entitled to presentence custody credit in case No. JCF31515 for the period in question.³

As a general matter, a criminal defendant is entitled to credit for "all days" spent in presentence custody. (§ 2900.5, subd. (a).) However, this presentence credit "shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted." (§ 2900.5, subd. (b).) We independently review the construction of these statutes and their application to undisputed facts. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415,

³ We reject the People's argument that Hernandez forfeited his claim to presentence credit. Hernandez objected at the time of his sentencing on December 11, 2014, and the trial court considered the objection as a request for reconsideration. Because it is undisputed that the issue of presentence credit was presented to, and considered by, the trial court, we will address the merits of the issue that Hernandez raises in this appeal. (§ 1237.1; cf. *People v. Acosta* (1996) 48 Cal.App.4th 411, 415.)

432; *Pasadena Police Officers Assn. v. Superior Court* (2015) 240 Cal.App.4th 268, 284.) The defendant bears the burden of establishing a right to presentence custody credit. (*Bruner, supra*, 9 Cal.4th at pp. 1193-1194 & 1193, fn. 10.)

Credit determination is a complex matter: "Probably the only sure consensus among the appellate courts is a recognition that section 2900.5, subdivision (b), is "difficult to interpret and apply." ' ' ' (*In re Marquez* (2003) 30 Cal.4th 14, 19.) The central question in this case is whether the period of time that Hernandez was in custody between July 30, 2014 and October 14, 2014, is "attributable to proceedings related to the same conduct" for purposes of section 2900.5, subdivision (b) so as to allow presentence custody credit in both the probation case and the PRCS case. Because Hernandez was concurrently detained for violation of both his PRCS and his probation, we must determine whether his detention meets the "same conduct" requirement of section 2900.5, subdivision (b). If it does, then Hernandez would be entitled to presentence custody credit in both the PRCS case and the probation case. (*Bruner, supra*, 9 Cal.4th at pp. 1193-1195; *People v. Williams* (1992) 10 Cal.App.4th 827, 834 (*Williams*).) If it does not, then Hernandez would be entitled to presentence custody credit in only one of the two cases. (*In re Marquez, supra*, at p. 21 ["If an offender is in pretrial detention awaiting trial for two unrelated crimes, he ordinarily may receive credit for such custody against only one eventual sentence."].) Given the complexity of presentence custody credit determination, we review the legal framework before applying section 2900.5 to the facts of this case.

The Supreme Court first addressed section 2900.5 in *In re Rojas* (1979) 23 Cal.3d 152 (*Rojas*). In *Rojas*, a defendant serving a sentence for manslaughter was later charged with murder and transferred from prison to county jail pending trial of the murder charge. The Supreme Court held that the defendant was not entitled to presentence custody credit on his murder sentence because the pending murder case had no effect on his presentence liberty: the defendant was already in custody for the manslaughter conviction at the time he was charged with murder. (*Rojas, supra*, at p. 156.) The court rejected the defendant's argument that his custody was attributable *at least in part* to the pending murder charge, reasoning: "Although the word 'exclusively' does not appear [in section 2900.5, subdivision (b)], it is clearly provided that credit is to be given 'only where' custody is related to the 'same conduct for which the defendant has been convicted.'" (*Id.* at p. 155.)

The Supreme Court affirmed this general principle in *Bruner*, another case addressing the "multiple restraint" question presented by section 2900.5, subdivision (b)'s "same conduct" rule. (*Bruner, supra*, 9 Cal.4th at pp. 1191-1195.) *Bruner* affirmed the "general rule that a prisoner is not entitled to credit for presentence confinement unless he shows that the conduct which led to his conviction was the sole reason for his loss of liberty during the presentence period." (*Id.* at p. 1191.) Under *Bruner*, "where a period of presentence custody stems from multiple, unrelated incidents of misconduct, such custody may not be credited against a subsequent formal term of incarceration if the prisoner has not shown that the conduct which underlies the term to be credited was also a 'but for' cause of the earlier restraint." (*Id.* at pp. 1193-1194.)

In *Bruner* a parolee was arrested in May 1991 and had his parole revoked on the basis of four distinct parole violations: absconding from supervision, credit card theft, failing a drug test, and cocaine possession. (*Bruner, supra*, 9 Cal.4th at p. 1181.) Thereafter, he was charged and convicted only for the cocaine possession and, in February 1992, was sentenced without presentence custody credit. (*Id.* at pp. 1181-1182.) The Supreme Court rejected the defendant's contention that he was entitled to presentence custody credit on the drug offense. The court explained that the defendant's incarceration for violating parole between May 1991 and February 1992 was attributable to four separate acts, not solely to the cocaine possession that led to his sentence. Accordingly, "[b]ecause defendant ha[d] not shown that he could have been free during any period of his presentence custody but for the same conduct that led to the instant conviction and sentence, he [wa]s not entitled to credit on that sentence for the period of presentence restraint." (*Id.* at p. 1195.)

Three decisions by Courts of Appeal are instructive, although none involves the precise fact pattern in the instant case. Considered together with *Bruner*, *People v. Huff* (1990) 223 Cal.App.3d 1100 (*Huff*), *Williams, supra*, 10 Cal.App.4th 827, and *People v. Pruitt* (2008) 161 Cal.App.4th 637 (*Pruitt*) define the rule: A defendant may not receive a "windfall" of dual custody credit in two different matters under section 2900.5, subdivision (b) where the presentence incarceration was based on distinct conduct in the two matters. However, a defendant *may* receive dual custody credit if the presentence incarceration was based on the same conduct in both matters.

In *Huff*, while on probation for drug possession, the defendant was arrested in January and charged with grand theft automobile. (*Huff, supra*, 223 Cal.App.3d at pp. 1103-1104.) In March, his probation was summarily revoked due to the theft charge. The People dismissed the theft charge in April. In May, he received a two-year sentence for violating his probation on the original drug charge. On appeal from the trial court's credit determination, the Court of Appeal concluded that the defendant was not entitled to credit for the time he spent in custody between January and March, when his custody was due solely to the new theft charge. (*Id.* at p. 1105.) By contrast, he was entitled to credit after his probation was summarily revoked: between March and April, he was in custody for both the probation violation and on the new charge, and both were based on the same conduct—the car theft. (*Ibid.*) He was also entitled to credit after the theft charge was dismissed in April because the sole basis for the defendant's detention thereafter was the probation revocation in the original drug case. (*Id.* at p. 1106.)

Williams involved a different fact pattern and reached a different result, allowing the defendant to receive dual presentence custody credit. (*Williams, supra*, 10 Cal.App.4th at p. 834.) In July, while on probation for petty theft, the defendant was arrested for kidnapping and raping a minor. (*Id.* at pp. 829-830.) Unlike in *Huff*, the defendant's probation in *Williams* was summarily revoked immediately after his arrest.

(*Williams, supra*, at pp. 829-830.)⁴ In October, the trial court sentenced the defendant to 177 days for violating probation by failing to "obey laws"—i.e., for kidnapping and raping the minor—with 76 days credit for time served since his arrest in July. Thereafter, while serving his probation revocation sentence, the defendant was charged with 13 felony counts in connection with the kidnapping and rape. The defendant pled guilty to one count of rape, and the People dismissed the other counts. The trial court denied presentence custody credit on the rape sentence. (*Ibid.*)

The Court of Appeal reversed, concluding that the defendant was entitled to presentence credit from the time of his arrest in July to his sentencing in December because the sole basis for his incarceration for violating probation was the criminal conduct that led to his conviction for rape. (*Williams, supra*, 10 Cal.App.4th at p. 833.) Consequently, the defendant in *Williams* was entitled to dual credit because "he would have been free of incarceration for probation violation but for such proceedings relating to his conduct with [the minor]." (*Id.* at p. 834.)

In *Pruitt*, while on probation for burglary, the defendant was arrested in June 2006 and charged with receiving stolen property. (*Pruitt, supra*, 161 Cal.App.4th at p. 640.) In January 2007, the court summarily revoked his probation on the basis of the new charges (receipt of stolen property). He was sentenced in March 2007 on the probation violation, and the new charges were dismissed. (*Ibid.*) On appeal from the credit

⁴ To be precise, the defendant's probation in *Williams* was summarily revoked two days after the defendant's arrest. (*Williams, supra*, 10 Cal.App.4th at p. 829.) The Court of Appeal did not consider whether the defendant was entitled to presentence credit for the two-day period before his probation was summarily revoked.

determination, the Court of Appeal concluded that the defendant was entitled to custody credit for the period from his probation revocation in January to his sentencing in March: during that period, he was in custody for both the probation violation and on the new charges *based on the same conduct*, namely, his receipt of stolen property. However, the court denied credit for the six-month period after his arrest but before his probation revocation because, during that period, his custody was attributable solely to the new charges. (*Id.* at p. 649.) The court noted that the defendant might have received full credit from the time of his arrest if the probation revocation had occurred sooner: "To be sure, had [the defendant's] probation been summarily revoked immediately after his arrest on June 10, 2006, as often occurs when a probationer is arrested on felony charges, he could have earned approximately 300 days of additional presentence custody credit." (*Ibid.*)

The rule that we can distill from these cases is that in applying section 2900.5, subdivision (b), a court should look first to whether the defendant was in presentence custody on two separate matters during a given period of time. (See, e.g., *Huff, supra*, 223 Cal.App.3d at p. 1105 [until probation was summarily revoked, new charges provided the sole basis for defendant's presentence custody]; *Pruitt, supra*, 161 Cal.App.4th at p. 649 [same].) Thereafter, a court should determine whether the conduct underlying the custody is the *same* in both matters. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 30 ["Everyone sentenced to prison for criminal conduct is entitled to credit against his term for all actual days of confinement solely attributable to the same conduct."].) In *Williams*, the new rape charge was the sole basis for defendant's

incarceration for probation violation. Consequently, the defendant was entitled to presentence custody credit on both the probation sentence and the rape sentence. (*Williams, supra*, 10 Cal.App.4th at pp. 833-834.) By contrast, in *Bruner, supra*, 9 Cal.4th at page 1195, the prior restraint for violating parole was based on four distinct acts. As a result, the defendant was not entitled to presentence custody credit on the sentence for cocaine possession, which was only one of four grounds for the parole revocation.

Applying this framework to the facts of this case, we conclude that Hernandez is entitled to presentence custody credit in case No. JCF31515 against his four-year sentence for the time he spent in custody from July 30 to October 14, 2014. As in *Williams*, in which the defendant's incarceration for violating probation was based on the same *conduct* (kidnapping and raping a minor) that led to his conviction and sentence for rape, Hernandez's incarceration for violating probation is based on the same conduct that led to his revocation of PRCS. (*Williams, supra*, 10 Cal.App.4th at p. 833.) The *Williams* court focused *not* on the charge to which the defendant ultimately pled guilty

but, rather, to the fact that the probation revocation for failure to "obey all laws" was based on the same criminal conduct to which he pled guilty—rape. (*Id.* at p. 834.)⁵

Hernandez's PRCS revocation petition alleged one additional ground for violation that the probation revocation petition did not, i.e., his failure to "[r]eport to the [p]robat[ion] [d]epartment within 48 hours after release from custody." However, that *conduct* also violated an identically phrased condition of Hernandez's probation. In other words, the *same conduct*—the conduct underlying *all five* grounds for revocation—violated conditions of both Hernandez's probation and his PRCS and could have been alleged in both revocation petitions.

The omission from one of two concurrently filed revocation petitions of a single ground for violation that could have been alleged, but was not, cannot alter the

⁵ In *People v. Stump* (2009) 173 Cal.App.4th 1264, 1273, the court concluded that a defendant's incarceration for parole revocation after his arrest for driving under the influence could not be credited against his later felony sentence for DUI because *either* consuming alcohol *or* driving without his parole officer's permission *independently* could result in custody for parole violation. In reaching that conclusion, the court in *Stump* appears to have focused on whether the new *charge* was the sole basis for the defendant's prior incarceration, rather than the underlying *conduct*. (*Ibid.* ["It is not the case that 'but for' a drunk driving charge defendant would have been free of parole revocation custody. He still would have been held for driving, which is not necessarily a crime in and of itself but may be, and was here, a parole violation. Likewise, he still would have been held for consuming alcohol, which is not necessarily a crime in and of itself but may be, and was here, a parole violation."].) We disagree with *Stump's* analysis to the extent it conflicts with *Williams, supra*, 10 Cal.App.4th at page 834. However, *Stump* reached the correct result for a different reason. The question in *Stump* was whether the defendant was entitled to credit for the 152-day period from his arrest in July to his arraignment on the new DUI charge in December. (*Stump, supra*, 173 Cal.App.4th at p. 1268.) Because the *sole basis* for his custody during that prearraignment period was for probation violation, the court properly denied presentence credit on the DUI sentence. (*Pruitt, supra*, 161 Cal.App.4th at p. 649; *Huff, supra*, 223 Cal.App.3d at p. 1105.)

defendant's eligibility for custody credit: failing to *allege* the conduct in one matter while contemporaneously alleging it in the other, whether the result of artful, or perhaps inartful, pleading, does not change the fact that the same *conduct*, to which Hernandez admitted, constituted violations of the conditions of both Hernandez's probation and his PRCS.⁶

Bruner directs that credit is not allowed "unless the *conduct* leading to the sentence was the *true and only unavoidable basis* for the earlier custody." (*Bruner, supra*, 9 Cal.4th at p. 1192.) The defendant in *Bruner* was not entitled to presentence credit on his drug possession charge because absconding, credit card theft, and a failed drug test provided independent, unrelated grounds for the defendant's prior incarceration, separate and apart from his cocaine possession. Hernandez, in contrast, was *not* in custody for "multiple, unrelated incidents of misconduct." (Cf. *id.* at p. 1193.) *Bruner* does not suggest that where the conduct underlying concurrent custody in two matters is the same, custody credit can be altered by omitting an allegation from one of the charging documents.

Williams, a case that the *Bruner* court approved (*Bruner*, 9 Cal.4th at p. 1193, fn. 10), is instructive. In *Williams*, the Court of Appeal held that the defendant would have been free of incarceration for probation violation but for proceedings relating to the new rape charge, such that he was entitled to dual credit. (*Williams, supra*,

⁶ A contrary interpretation could encourage strategic pleading to deprive a defendant of custody credit. We note that both revocation petitions were filed by the same probation officer in the same court on the same day. Hernandez admitted to all of the violations alleged in the PRCS and probation revocation petitions at the same hearing.

10 Cal.App.4th at p. 834.) In reaching this result, the court rejected as "erroneous" the trial court's conclusion that the prosecution's dismissal of 12 of 13 counts of the information converted the case to a "mixed conduct case" for which dual credit was not allowed. (*Ibid.*) Such a result, the court concluded, "would skew the required judicial consideration" for determining whether credit is allowed, "by necessarily compelling a finding that such custody had only a *partial* relationship to such conduct when a count of the accusatory pleading was dismissed before conviction." (*Id.* at p. 835.) Applying the same reasoning here, we decline to conclude that Hernandez was incarcerated for different conduct in the PRCS and probation cases merely because, as a procedural matter, one of the charging documents includes an allegation that could have been included in the other, but was not.⁷

Our conclusion that Hernandez is entitled to dual credits is consistent with section 2900.5's legislative purpose. The statute seeks to equalize actual time served in custody by defendants convicted of the same offense. (*In re Joyner* (1989) 48 Cal.3d 487, 494.) That purpose "is achieved by awarding credit for all periods of presentence custody attributable to the proceeding, including time served as a condition of probation." (*Ibid.*)

⁷ We find further factual support for our conclusion in the probation officer's supplemental reports in support of revocation, filed in both cases on September 26, 2014. Both reports contain identical language under "Cause for Present Hearing," listing Hernandez's failure to maintain enrollment in drug and alcohol counseling; his admission to using methamphetamines and testing positive for methamphetamine and marijuana; his failure to report to the probation officer as directed in April and May; and his failure to notify his probation officer of his change in address. The fact that the two reports allege the same conduct—and neither alleges failure to report within 48 hours of release from custody as a "Cause for Present Hearing"—supports our conclusion that the *conduct* underlying Hernandez's arrest in the two cases was the same.

However, "where a period of presentence custody stems from multiple, unrelated incidents of misconduct," courts avoid "bestow[ing] the windfall of duplicative credits against all terms or sentences that are separately imposed in multiple proceedings." (*Bruner, supra*, 9 Cal.4th at pp. 1191, 1193.) As the *Bruner* court explained, section 2900.5 is not intended "to allow endless duplicative credit against separately imposed terms of incarceration when it is not at all clear that the misconduct underlying these terms was related." (*Id.* at p. 1193.) Applying those principles here, awarding dual credit to Hernandez does not confer a credit windfall. Hernandez committed acts that violated identical conditions of both his probation and PRCS. Granting him custody credit for the time he spent in custody on the probation revocation would not accord him duplicative credit for "multiple, unrelated incidents of misconduct." (*Cf. ibid.*)

Finally, we reject the People's argument that credit would be warranted only if Hernandez's presentence custody for the probation revocation were attributable to the original assault in case No. JCF31515, for which Hernandez entered his plea. Hernandez received a suspended four-year sentence in the original assault case and was placed on probation. Hernandez's probation revocation was a "proceeding[]" related to the same

conduct" for which he was sentenced within the meaning of section 2900.5, subdivision (b).⁸

II

On October 24, 2013, Hernandez entered a no contest plea to one count of violation of section 245, subdivision (a)(4). On the record, the court orally granted the People's motion to dismiss "all of the other charges against these defendants." Hernandez argues that the trial court erred under section 1385 by failing to state its reasons for dismissing the sentencing enhancement; he seeks correction to protect against any future claim that the court's dismissal of the enhancement was "ineffective." By contrast, the People maintain that the trial court is not required to provide a written reason for its dismissal where, as here, the dismissal effectuated the terms of a negotiated plea. We agree.

⁸ As the case law makes clear, section 2900.5, subdivision (b) looks to the conduct for which the defendant is *currently* being sentenced, rather than the conduct underlying the original conviction. For example, *Huff*, *supra*, 223 Cal.App.3d at pages 1105-1106 looked to whether the defendant's incarceration for probation violation was based on the same conduct as his incarceration on the new theft charges—*not* whether the probation violation involved the same conduct as the underlying drug offense. Similarly, *Pruitt*, *supra*, 161 Cal.App.4th at page 649 looked to whether the defendant's incarceration for probation violation was based on the same conduct as his incarceration for the new charge of receipt of stolen property—*not* whether the probation violation involved the same conduct as the underlying burglary offense. Although *Williams* (unlike *Huff* and *Pruitt*) involved a credit determination on the sentence for the *new* conviction rather than the original conviction, it, too, looked at whether the conduct underlying the incarceration for probation violation and the conduct underlying incarceration on the new charge were the same, without reference to the defendant's original petty theft offense. (*Williams*, *supra*, 10 Cal.App.4th at p. 834.)

"[S]ection 1385, subdivision (a) provides in relevant part: 'The judge . . . may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed.' The discretion thereby conferred on the trial courts includes the discretion to dismiss or strike an enhancement in the furtherance of justice. [Citations.] But whether the decision is to dismiss the entire action or, as here, only an enhancement allegation, . . . section 1385 requires that the reasons for the dismissal be set forth 'in an order entered upon the minutes.' [Citation.]" (*People v. Bonnetta* (2009) 46 Cal.4th 143, 145-146 (*Bonnetta*).)⁹

Here, the trial court dismissed the sentence enhancement to effectuate a plea agreement between Hernandez and the district attorney. "[A] trial court's failure to set forth its reasons for a dismissal on the written record will not lead to reversal when it implements a plea bargain between the district attorney and the defendant." (*Bonnetta, supra*, 46 Cal.4th at p. 153, fn. 5.) "[B]ecause the purpose of the statutory requirement [in section 1385] is to protect the public, not the defendant, it has been held that a defendant may not complain that the requirement has not been met." (*Ibid.*)

III

The parties agree that the minutes for October 24, 2013, contain a clerical error. The minutes state that Hernandez's plea in case No. JCF31515 included an admission to a prior conviction in case No. JCF29545. As the parties both point out, case No. JCF29545

⁹ Effective January 1, 2015, the statute requires a trial court to state reasons for a dismissal in an order entered upon the minutes only "if requested by either party or in any case in which proceedings are not being recorded electronically or reported by a court reporter." (§ 1385, subd. (a), as amended by Stats. 2014, ch. 137, § 1.)

was brought against Hernandez's codefendant, Richard Funez, not Hernandez.

Hernandez did not admit to any prior convictions in his plea agreement with the People.

"It is not open to question that a court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts." (*People v. Mitchell* (2001)

26 Cal.4th 181, 185.) We remand the case and direct the trial court to correct this clerical error.

DISPOSITION

The trial court's December 11, 2014 order is reversed, and the matter is remanded with directions. We direct the court to award Hernandez 77 days of presentence custody credit under section 2900.5, subdivision (b) and 76 days of conduct credit under section 4019, for a total of 153 days of credit in case No. JCF31515. We also direct the court to correct the minutes for October 24, 2013, to delete the statement that Hernandez admitted to a prior conviction in case No. JCF29545 in entering his plea.

AARON, J.

WE CONCUR:

McCONNELL, P. J.

PRAGER, J.*

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.