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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Appellant,

v.

RUBEN VINDIOLA,

Defendant and Respondent.

D068660

(Super. Ct. No. SCS275958)

APPEAL from a judgment of the Superior Court of San Diego County, Ana L. Espana and Garry G. Haehnle, Judges. Affirmed and remanded with directions.

Bonnie M. Dumanis, District Attorney, Julianne K. Reizen, James E. Atkins and Lilia E. Garcia, Deputy District Attorneys, for Plaintiff and Appellant.

John E. Edwards, under appointment by the Court of Appeal, for Defendant and Respondent.

## INTRODUCTION

Ruben Vindiola pleaded guilty to assault by means likely to produce great bodily injury to the person of a peace officer (Pen. Code, § 245, subd. (c)),<sup>1</sup> which occurred while Vindiola was serving time in prison on two prior felony convictions. After granting Vindiola's petition under section 1170.18 (Proposition 47) to have his prior felony convictions reduced to misdemeanors, the court imposed the stipulated sentence of three years for the assault and awarded conduct and custody credits for the time he remained in custody beyond the time he would have served on the reduced misdemeanor sentences. The People appeal contending the sentence was unauthorized because it included credits for time served before the assault offense occurred.

Vindiola concedes a defendant who is resentenced under Proposition 47 may not receive credits toward a sentence for a new conviction for time served *before* the new offense was committed. (§ 2900.5, subd. (b) ["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"].) The question, then, is what is the appropriate remedy?

We decline Vindiola's request to remand the matter to allow him to consider withdrawing his plea because we conclude the plea agreement in this case did not include a promise for credits for the period of time prior to the assault. Instead, we remand the matter to the trial court with directions to modify the award of credits to reflect custody

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise indicated.

and conduct credits attributable to the assault conviction from the date of the assault to the date of sentencing. The court may also consider whether custody credit for time served prior to the date of the assault may be credited to fees or fines pursuant to section 2900.5, subdivision (a). In all other respects, we affirm the judgment.

## BACKGROUND

### A

#### *Related Prior Offenses*

In May 2013 Vindiola pleaded guilty to one count of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and he was placed on probation (*People v. Vindiola* (Super. Ct. San Diego County, 2013, No. SCE329364)).

Approximately four months later, while on probation, Vindiola entered a commercial establishment and stole \$130 worth of merchandise. He pleaded guilty to burglary (§ 459) and admitted a prison prior (§§ 667.5, 668) (*People v. Vindiola* (Super. Ct. San Diego County, 2013, No. SCE334031)). The court sentenced him to two years in prison for the burglary case. The court revoked his probation and sentenced him to three years in prison on the possession case.

### B

#### *Current Offense*

On August 9, 2014, while serving time for the burglary and possession cases at the George Bailey Detention Facility, Vindiola and other inmates battered and assaulted two San Diego County deputy sheriffs, causing injuries to both deputies. A search of

Vindiola's cell revealed a four-inch stabbing weapon made from a thin piece of metal sharpened to a point with a sharp edge.

Vindiola was charged with one count of assault with a deadly weapon or by means likely to produce great bodily injury upon a peace officer (§ 245, subd. (c)) and one count of possession of a weapon at a penal institution (§ 4502, subd. (a)).<sup>2</sup> The amended complaint alleged probation denial priors (§ 1203, subd. (e)(4)) and two prison priors based upon convictions in 2009 and 2011 (§§ 667.5, subd. (b), 668). Vindiola pleaded guilty to a violation of section 245, subdivision (c), in exchange for a stipulated three-year state prison term. The remaining charge and allegations were dismissed.

## C

### *Proposition 47 Reduction and Sentencing*

After the current assault case was filed, the court granted Vindiola's petition under Proposition 47 for resentencing of the related 2013 burglary and possession convictions as misdemeanors. At the sentencing hearing, the court imposed concurrent six-month (180-day) terms on the burglary and possession convictions, retroactive to the original date of sentencing, with credit for time served on both cases. The court determined Vindiola completed his sentences on the related cases by March 14, 2014.

The court then determined Vindiola was entitled to presentence custody credit toward the stipulated three-year term for the assault conviction for the period of time between March 14, 2014 through June 17, 2015 (the date of the sentencing hearing). The

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<sup>2</sup> Other counts were alleged as to other defendants.

court calculated the credit to be 920 days based upon 460 actual days in custody plus 460 days conduct credit (§ 4019). The People objected to using the Proposition 47 credits for the period of time before the assault occurred on August 9, 2014.

## DISCUSSION

### I

A person who is resentenced pursuant to Proposition 47 "shall be given *credit for time served* and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole." (§1170.18, subd. (d), italics added.) The parties agree Vindiola was entitled to credits from August 9, 2014, the date of the assault, until he was resentenced on June 17, 2015. The parties also agree the court improperly awarded custody credit for the 148-day period of time from March 14, 2014, through August 9, 2014, because this predated the assault. (§ 2900.5, subd. (b).)

The People also contend the court was not authorized to award *conduct* credits under section 4019 for the period before the assault because the purpose of the presentence credit scheme is to " 'encourage[] minimal cooperation and good behavior by persons temporarily detained in local custody before they are convicted, sentenced, and committed on felony charges.' " (*People v. Brown* (2004) 33 Cal.4th 382, 405.) According to the People, awarding conduct credits for behavior prior to the commission of a new offense defeats the purpose of section 4019 because "[r]eason dictates that it is impossible to influence behavior after it has occurred." (*In re Stinnette* (1979) 94

Cal.App.3d 800, 806.) Vindiola does not address this contention in his respondent's brief. Therefore, we deem the issue conceded.

## II

Given the concession the court improperly awarded custody and conduct credits for time served prior to the August 9, 2014 incident, we turn to the question of the appropriate remedy. The People ask us to modify the credits or, alternatively, remand the matter to the trial court for resentencing to modify the award of credits based on the custody related to the assault offense. (*People v. Culpepper* (1994) 24 Cal.App.4th 1134, 1138.) The People note "if a defendant is 'overpenalized' by serving presentence days in custody in excess of his [or her] imposed imprisonment term, those excess days are to be applied to the defendant's court-ordered payment of monies that serve as punishment, as opposed to court-ordered payment of monies for nonpunitive purposes." (*People v. Robinson* (2012) 209 Cal.App.4th 401, 407.) Section 2900.5 gives the sentencing court discretion to establish a daily rate upon which to credit certain fines.<sup>3</sup> Beyond identifying the possibility of awarding excess credits toward monetary fines and fees under section 2900.5, subdivision (a), the parties have not briefed how such credits may be applicable, if at all, in this case and it does not appear from this record such a showing was made below.

Vindiola contends the promise of credits for time served on the related cases was an inducement for his guilty plea and the appropriate remedy is to remand the matter to

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<sup>3</sup> The statute was amended effective January 1, 2015, to make the minimum daily credit rate \$125, rather than \$30. (Stats. 2015, ch. 209, § 2.)

the trial court with the opportunity for him to consider withdrawing his guilty plea, renegotiating the plea deal, or accepting the reduced credits. We do not agree.

"A plea bargain is a negotiated agreement between the prosecution and the defendant by which a defendant pleads guilty to one or more charges in return for dismissal of one or more other charges. [Citation.] ... [Citation.] [¶] Because a negotiated plea agreement is in the nature of a contract, 'it is interpreted according to general contract principles.' " (*People v. Martin* (2010) 51 Cal.4th 75, 79.) " 'The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties.' " (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) " 'The mutual intention to which the courts give effect is determined by objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties.' " (*Ibid.*) " '[T]he course of actual performance by the parties is considered the best indication of what the parties intended the writing to mean.' " (*Epic Communications, Inc. v. Richwave Technology, Inc.* (2015) 237 Cal.App.4th 1342, 1355.)

In this case, Vindiola signed a plea form agreeing to plead guilty to a violation of section 245, subdivision (c), in exchange for a stipulated term of three years in state prison. The form noted three related cases for sentencing credits. At the change of plea hearing, Vindiola said he wanted custody and conduct credits for the time he served in

the "custody ward" since the incident on August 9, 2014. "I'm just saying, like, two for one day. I already served 16 months on this case."

During the change of plea hearing on May 19, 2015, the court, counsel, and Vindiola discussed the need to figure out when the credits would start. Defense counsel stated "[the prosecutor] and I are both of the same opinion that my client should be given the credits that he's due, and we just need to figure out what that is." Defense counsel stated the prosecutor thought the "credits were timed out as of last month. So he's only entitled maybe one month's credit." Defense counsel, however, stated if his client was only sentenced to one misdemeanor count "he should have credits from August [2014] forward."

The prosecutor told the court Vindiola's sentence for the three misdemeanors would be "maxed out and his release date per our office records would be April 29[, 2015], and then he would start earning credit on this case." Vindiola again stated he thought he should be entitled to 16 months of credit (employing two credits per day) from when the "in-house case" occurred on August 9, 2014.

When defense counsel stated, "We had the discussion about how when you commit a crime in custody you have to—," Vindiola responded by saying "turn around basically." The court further explained, "So you understand, though, if a crime is committed in prison that you don't get credit for that time. It's not concurrent with your prison time. The crime—the credit on the new case doesn't start until you are done serving your time in custody for the old one, right? [¶] So if your time in prison ended, you know, that time has ended in April [2015], then it's from April that you would start

earning credits on the new case. I mean that's just the law." Vindiola responded, "Yeah." After this exchange the court went on to inquire about Vindiola's understanding of the plea agreement and to take Vindiola's guilty plea.

This case is unlike *People v. Superior Court (Sanchez)* (2014) 223 Cal.App.4th 567, 569-570 (*Sanchez*) where a sentence negotiated as part of a plea agreement was unauthorized by law. The court in that case concluded the appropriate remedy was to vacate the plea and the sentence. (*Id.* at pp. 577-578.) It is also not like the case of *People v. Velasquez* (1999) 69 Cal.App.4th 503, 505-506 where a prosecutor mistakenly represented the maximum sentence to the defendant and the court held the People to their bargain by modifying the judgment to a lower term within the scope of the plea agreement. Here, in contrast, there is no suggestion in this record the plea agreement itself was invalid or Vindiola relied upon a representation he was entitled to credits prior to the August 9, 2014 incident. Vindiola's own statements show he understood he was not entitled to credits for time served prior to the assault. Therefore, there is no basis upon which to vacate the plea agreement or the sentence based upon the agreement.

## DISPOSITION

The matter is remanded with directions for the trial court to modify the award of credits to reflect custody and conduct credits attributable to the assault conviction from the date of the assault to the date of sentencing (August 9, 2014 to June 17, 2015). The court may consider whether custody credit for time served prior to the date of the assault may be credited to fees or fines pursuant to section 2900.5, subdivision (a). In all other respects, the judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

IRION, J.