

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CLYDE JOHNSON, JR.,

Defendant and Appellant.

E051747

(Super.Ct.No. RIF132634)

OPINION

APPEAL from the Superior Court of Riverside County. Rafael A. Arreola, Judge. (Retired judge of the San Diego Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Dismissed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez, and Jennifer A. Jadovitz, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Clyde Johnson, Jr., pleaded guilty to offenses arising out of a vehicle pursuit that had taken place on August 20, 2006. After his plea, defendant filed the instant appeal, alleging that a material term of his plea bargain had not been honored: He had been promised at the time of plea that he would be able to earn 50 percent credits against his sentence, but in fact he was ineligible to earn credits at that rate, because of his prior strike conviction.

Defendant had also filed a writ proceeding, based on the same alleged failure to honor the plea bargain. This court referred the matter to the superior court with directions to issue an order to show cause. The trial court held oral argument on August 26, 2011, and granted the writ. The court found that defendant had been misinformed about his eligibility to receive 50 percent credits on his state prison sentence. The court granted relief in the form of withdrawing defendant's guilty pleas and reinstating the charges against him.

Defendant urges that the court could and should have granted relief in the form of specific performance of the plea bargain. The Attorney General maintains that the matter is moot, because defendant, after having his pleas withdrawn, has again pleaded guilty and been sentenced to four years in state prison. We agree with the Attorney General that this appeal is now moot.

FACTS AND PROCEDURAL HISTORY

On August 20, 2006, a police officer saw defendant drive through a red traffic light in Claremont. The officer activated his red lights and siren to pull over defendant's

vehicle. Defendant initially pulled over, but sped away when the officer got out of the patrol car. Defendant then drove through more red traffic lights before entering the freeway.

A highway patrol car took up the chase, with two other cars and a helicopter participating in the pursuit. Defendant committed numerous additional traffic violations while attempting to flee. Eventually, the chase ended in an unincorporated area of Riverside County. The highway patrol officer who took charge of defendant at the stop observed signs that defendant was under the influence of alcohol. A breath test showed that defendant had a blood alcohol level of 0.09 percent.

Defendant was charged with four offenses: count 1, evading a police officer (Veh. Code, § 2800.2); count 2, misdemeanor driving under the influence (Veh. Code, § 23152, subd. (a)); count 3, misdemeanor driving with a blood alcohol level greater than 0.08 percent (Veh. Code, § 23152, subd. (b)); and count 4, misdemeanor driving while his license was suspended (Veh. Code, § 14601.2, subd. (a)). The information also alleged that defendant had served four prior prison terms for felony convictions (Pen. Code, § 667.5, subd. (b)), and that he had suffered a prior strike conviction for making terrorist threats (Pen. Code, §§ 422, 667, subd. (c), 1170.12, subd. (c)(1)).

The trial court exercised its discretion not to dismiss the strike allegation, finding that defendant fell within the spirit of the three strikes law. Pursuant to a plea bargain, defendant agreed to plead guilty to the four offenses and admitted the strike allegation. In exchange, the court dismissed the prior prison term allegations, and imposed a prison

term of four years (on count 1, with misdemeanor sentences concurrent on the remaining counts), instead of a maximum 11-year prison term. During a colloquy in chambers, the parties had agreed that defendant would be able to earn 50 percent conduct credits, despite his prior strike conviction.

After he had been sentenced and begun serving his term, defendant complained to his attorney that the Department of Corrections and Rehabilitation was not allowing him to earn 50 percent credits, because of his strike conviction. The court agreed that the department was correct, but stated it would rectify the situation.

Defendant filed this appeal, as well as a writ petition, seeking specific performance of the 50 percent credits term of his plea bargain.

ANALYSIS

I. The Appeal Is Moot

As noted above, the trial court held a hearing on defendant's writ petition in August 2011. As a result, the trial court agreed that the 50 percent credits had been a material term of the plea bargain, such that defendant was entitled to withdraw his pleas.

We requested letter briefs from the parties to address the issue whether this appeal was rendered moot by the result of the writ proceedings. Initially, defendant argued that the matter was not moot, because there were methods by which he could be sentenced so as to achieve the promised sentence of four years, with the allowance of 50 percent credits. However, the Attorney General has informed the court that defendant has recently again pleaded guilty and received a four-year sentence.

“An appeal should be dismissed as moot when the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief.” (*Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479 [Fourth Dist., Div. Two].) Here, defendant’s new plea agreement has completely superseded his former bargain. He has again pleaded guilty upon terms he now finds satisfactory. We can afford no remedy or relief arising out of the superseded bargain.

DISPOSITION

Accordingly, the instant appeal is dismissed as moot.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

HOLLENHORST
Acting P.J.

MILLER
J.