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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGEL RAY NEGRETE,

Defendant and Appellant.

E054591

(Super.Ct.No. RIF10003393)

OPINION

APPEAL from the Superior Court of Riverside County. Michael B. Donner,
Judge. Affirmed with directions.

Lewis A. Wenzell, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Heather
M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Angel Ray Negrete was convicted of commercial burglary and petty theft. (Pen. Code, §§ 459, 488.)¹ The trial court found true that defendant had served three prior prison terms within the meaning of section 667.5, subdivision (b). Defendant was sentenced to a total term of six years in state prison, which included 60 days in county jail for the petty theft (count 1) to run concurrently with the base term for the burglary (count 2). Defendant also received a total of 136 days of presentence credit pursuant to section 4019—68 actual and 68 conduct.

Following sentencing, defendant filed a petition for order granting presentence custody and conduct credits on a partially preprinted form. In the handwritten portion of the petition, defendant stated that he was arrested and released on bail on July 23, 2010 (one day of custody). Defendant also indicated that on August 2, 2010, a parole hold was placed on him, and the record shows he was received at California Institute for Men on August 4. It also appears that a revocation hearing was held on August 18 with a result that he was ordered returned to custody for an eight-month term.²

The petition did not expressly include the claim now made—that the parole revocation was based on the same conduct as the criminal case *and no other*. It included only the somewhat ambiguous statement, “Parole Revocation Arrest for Case No. RIF10003393,” which is the instant case. There is no supporting documentation for

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

² Defendant’s motion and chronology were not entirely clear as to which periods he claims should have resulted in additional credits. However, due to our analysis, it is not necessary for us to attempt to sort out the details.

this claim; the only prison documentation in the clerk's transcript reflects that a hold was placed and a revocation term imposed.³

On this appeal, defendant argues that the concurrent term for petty theft was improperly imposed, and should be stayed under section 654, and that he is entitled to additional presentence credits based upon time served related to the parole revocation proceedings. The Attorney General concedes the section 654 issue, and we will, to that extent, direct the trial court to stay the term. With respect to the claim for additional credits, we will affirm.

STATEMENT OF FACTS

Defendant walked into a home improvement store, picked up a tool kit, and proceeded to leave the store without paying for the tool kit. An employee spotted him and called the manager, who attempted to stop defendant. However, defendant was able to exit the store and get into the passenger side of a vehicle waiting outside, which was then driven off. After his arrest,⁴ defendant told the investigating officer that he had gone to the store because he needed money and planned to split the proceeds with "Wade," who was the driver of the getaway vehicle.

³ In fact, there were apparently two separate revocation proceedings, the second occurring after defendant had completed the revocation term and was again out on bail. Defendant concedes that the reason for his custody on the second revocation cannot be shown to have been connected with the criminal charges, and he does not seek credit for that time.

⁴ The circumstances surrounding his later arrest are not clear.

DISCUSSION

A.

The People agree that the 60-day concurrent term should have been stayed. Defendant was sentenced to state prison for burglary. The same criminal intent informed both the burglary and the petty theft, which was its object. Accordingly, section 654 bars separate punishment for the two offenses. The proper procedure would have been to stay the sentence for the petty theft. (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1468.) We will so direct.

B.

The basic rule governing the award of presentence credit against a prison term where the defendant has spent custodial time relating to the conduct underlying the criminal charge was firmly established in *People v. Bruner* (1995) 9 Cal.4th 1178, 1180, 1193-1194. As the Supreme Court explained in that case, a defendant is only entitled to credit against a subsequently imposed prison term if the earlier time in custody was *solely* based upon the misconduct that led to the eventual conviction. (*Id.* at p. 1194.) It is not enough that the misconduct was “a” cause of the earlier confinement. (*Ibid.*) Furthermore, it is the defendant who bears the burden of establishing that the conduct that led to his conviction was the sole reason for his earlier confinement. (*People v. Shabazz* (2003) 107 Cal.App.4th 1255, 1259.)

Defendant did not meet this burden in the trial court. As we have pointed out, his petition contained nothing more than a claim that the first parole revocation was based on

the criminal conduct at issue in the prosecution. Courts are fully justified in viewing such uncorroborated claims with skepticism. (See *In re Alvernaz* (1992) 2 Cal.4th 924, 938.)

We agree that it is likely defendant's conduct was "a" cause of the revocation proceedings. However, we are also aware from experience that inmates are routinely provided with, or at least have access to, the documents reflecting revocation proceedings, including the specific charges and findings. In the absence of supporting documentation, the trial court correctly implicitly found that defendant failed to carry his burden. Revocation proceedings may be based upon a parolee's violation of any of the conditions of parole to which he is subject (see Cal. Code Regs., tit. 15, § 2616), and these conditions may, and commonly do, range much farther afield than the criminal law. (See *People v. Stump* (2009) 173 Cal.App.4th 1264, 1273 [defendant charged with drunk driving not entitled to presentence credits based on parole revocation where his conduct also violated conditions against consuming alcohol and driving a vehicle without his parole agent's permission].) Thus, even though we agree that the timing of the first revocation proceeding suggests a connection with defendant's criminal conduct, which resulted in his criminal convictions, we cannot assume he was revoked *solely* for that conduct. Where no reason appears why defendant could not have provided appropriate corroborating documentation to the trial court, we decline to hold that the trial court was required nevertheless to accept his bare assertion that the revocation was due only to the criminal conduct.

DISPOSITION

The trial court is directed to modify defendant's sentence as follows: The 60-day concurrent term imposed in count 1 (petty theft) is stayed pursuant to Penal Code section 654. The superior court clerk is directed to issue a minute order reflecting the modification and forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

MILLER
J.