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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.

JAYLIN TYREE MEAKINS,

Defendant and Appellant.

E055488

(Super.Ct.No. FVI1100969)

OPINION

APPEAL from the Superior Court of San Bernardino County. Jules E. Fleuret, Judge. Reversed.

Susan S. Bauguess, 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, Melissa Mandel, and Warren Williams, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jaylin Tyree Meakins appeals from a postsentencing order denying his motion for additional conduct credits pursuant to Penal Code section

4019. Defendant contends that he was entitled to the conduct credits for the period of time he was incarcerated in juvenile hall prior to sentencing because, although he was minor at that time, he was charged as an adult and all proceedings in this case took place in adult court.

We agree that he is entitled to the additional credits, and we will reverse the order.¹

PROCEDURAL HISTORY

An information filed May 18, 2011, charged defendant with second degree robbery in violation of Penal Code section 211.² The information alleged that defendant was a minor who was at least 16 years of age at the time of the commission of the offense and that he personally used a handgun within the meaning of sections 1203.06, subdivision (a)(1) and 12022.5, subdivision (a), causing the offense to become a serious felony pursuant to section 1192.7, subdivision (c)(8) and a violent felony within the meaning of section 667.5, subdivision (c)(8).

On June 24, 2011, defendant pleaded nolo contendere to robbery, and the trial court ordered the section 12022.5, subdivision (a) allegation stricken. On July 28, 2011, the trial court granted probation for a term of 60 months, with the condition that defendant serve 365 days in custody, first in juvenile hall and then in a San Bernardino

¹ Defendant raises other issues, but as we discuss below, those issues are not cognizable in this appeal.

² All statutory citations refer to the Penal Code unless another code is specified.

County jail facility, to which he was to be transferred on his 18th birthday. The court awarded defendant credit for time served in juvenile hall prior to sentencing, but did not award conduct credits. Defendant did not file a notice of appeal from his sentence.³

On November 10, 2011, a hearing was held concerning presentence conduct credits. The matter was continued to December 1, 2011, to allow the probation department to prepare a credits memo.

On December 1, 2011, a hearing was held to determine defendant's eligibility to receive presentence conduct credits for the time he spent in juvenile hall prior to sentencing. The court held that defendant was not entitled to presentence conduct credits as a matter of law.

On January 17, 2012, defendant filed a notice of appeal from the order of December 1, 2011. The court granted his request for a certificate of probable cause.

FACTS

Because defendant entered a plea of nolo contendere, and the appeal pertains solely to a sentencing issue, it is unnecessary to give the details of the crime. It suffices to say that defendant and Brian Triplett⁴ were identified by the victim of a robbery

³ The record in this appeal does not contain a notice of appeal from the sentence imposed on July 28, 2011, and we take judicial notice that this court's records show that no prior appeal was filed from the sentence. (Evid. Code, § 452, subd. (d).)

⁴ Triplett was also charged with second degree robbery and the weapon use allegation. Triplett also pleaded nolo contendere to the charge, but is not a party in the appeal.

which took place when two young men jumped into the backseat of the victim's car while the car was stopped at an intersection.

LEGAL ANALYSIS

1.

THE APPEAL IS TAKEN SOLELY FROM THE ORDER DENYING DEFENDANT'S POSTSENTENCING MOTION FOR CONDUCT CREDITS

In his opening brief, defendant raises issues concerning certain conditions of his probation and certain fees, both of which were imposed at his sentencing hearing on July 28, 2011. However, as noted above, defendant did not file a notice of appeal from his sentence. Rather, he filed a notice of appeal only from the postsentencing order issued on December 1, 2011, denying his motion for additional conduct credits. Accordingly, no other issues are cognizable in this appeal.

2.

DEFENDANT WAS ENTITLED TO CONDUCT CREDITS PURSUANT TO SECTION 4019

Defendant claims that he should receive presentence conduct credits for time spent in juvenile hall, because his case was directly filed in adult court. Respondent agrees, as do we.

Section 4019, subsection (c) provides:

“For each four-day period in which a prisoner is confined or committed to a facility as specified in [the] section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily

complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.”

An adult defendant who is sentenced either to state prison or to county jail is entitled, under section 4019, to presentence conduct credits for any time spent in custody prior to sentencing, assuming good conduct. (*People v. Sanders* (1979) 98 Cal.App.3d 273, 278-279.) A juvenile committed to the Department of Juvenile Justice is not entitled to conduct credit for precommitment time spent in juvenile hall because a minor committed for treatment as a juvenile is not similarly situated to an adult. (*In re Ricky H.* (1981) 30 Cal.3d 176, 186-190; see also *In re Edward S.* (1982) 133 Cal.App.3d 154, 158.) However, equal protection principles dictate that a minor who is tried as an adult and sentenced to state prison or county jail for his or her offense is similarly situated to an adult and is entitled to conduct credits for presentence time spent detained in a juvenile facility. (*People v. Twine* (1982) 135 Cal.App.3d 59, 62-63; *People v. Saldivar* (1984) 154 Cal.App.3d 111, 114-115.) Accordingly, defendant is entitled to section 4019 conduct credits.

Defendant contends that because he has already served the term in custody imposed as a condition of probation, the additional days to which he is entitled under section 4019 should be applied to reduce his remaining term of probation. He cites *In re Ballard* (1981) 115 Cal.App.3d 647 (*Ballard*). *Ballard*, however, is distinguishable.

In *Ballard*, the petitioner’s release from state prison was delayed because credits to which he was entitled, including presentence conduct credits, were not applied to determine his release date. The Court of Appeal held that because a prisoner’s

postrelease parole period begins when he or she is actually released from prison, credits which were erroneously not applied to the sentence must be applied to the postrelease parole period. (*Ballard, supra*, 115 Cal.App.3d at pp. 649-650.) Here, defendant's probation period commenced on the date he was sentenced, not on the day he was released from custody, and his probation period was not extended by the excess time he spent in custody as a term of his probation. Consequently, he is not entitled to have his probation period reduced. The trial court may, however, consider the excess time served in deciding whether to grant a motion for early termination of probation, should defendant choose to file such a motion. (§ 1203.3, subd. (a).)

DISPOSITION

The order denying defendant conduct credits pursuant to Penal Code section 4019 for the period defendant was incarcerated in juvenile hall pending sentencing is reversed. Within 30 days after finality of this opinion, the superior court is directed to file amended minutes stating that defendant is entitled to such credits.

Should defendant file a motion for early termination of probation, the trial court shall direct the probation department to calculate the credits due under Penal Code section 4019, and the trial court may take those credits into consideration in determining whether early termination of probation is appropriate.

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MCKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.