

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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.

STEVEN JAY KRUEGER,

Defendant and Appellant.

E055726

(Super.Ct.No. FWV1002113)

OPINION

APPEAL from the Superior Court of San Bernardino County. Shahla Sabet,
Judge. Affirmed as modified.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Steven Jay Krueger was charged with second degree burglary. (Pen. Code, § 459, count 1.)¹ It was also alleged that he had served eight prior prison terms. (§ 667.5, subd. (b).) Pursuant to a plea agreement, defendant pled guilty to count 1 in exchange for a stipulated state prison term of three years, to be served concurrently with any parole violation, the dismissal of all other enhancements, and minimum fines of \$200. The plea agreement also stated that defendant agreed to waive 90 days of custody credit. The trial court sentenced him to three years in state prison and awarded 52 days of presentence custody credits (26 actual days and 26 conduct).

Defendant subsequently filed a motion with the trial court, in pro. per., to correct the abstract of judgment. He claimed that he was entitled to 90 more days of actual credit. The court denied the motion. Defendant filed a notice of appeal, indicating he wished to challenge the denial of the motion. We affirm.

PROCEDURAL BACKGROUND

Defendant was charged with, and admitted that, on or about August 25, 2010, he committed second degree commercial burglary. (§ 459.)

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and two potential arguable issues: (1) whether defendant was entitled to

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

additional presentence credits in light of the amendment to sections 2933 and 4019, effective January 25, 2010, or the subsequent amendment effective October 1, 2011; and (2) whether it was permissible for defendant to waive presentence custody credits under the plea agreement, “in light of the fact he received the upper term, which could result in him serving greater custody time than is permissible for the offense admitted.” Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

Although not raised by the parties, we note a few apparent clerical errors. In this case, the court neglected to dismiss the prior prison allegations. The plea agreement stated that defendant would plead guilty to count 1, in exchange for a three-year term in state prison and the dismissal of “all other enhancements.” Defendant pled guilty to count 1 on December 7, 2010, and the court stated that the remaining allegations would be dismissed at sentencing.

The sentencing hearing on December 20, 2010, was before a different judge. The prosecutor informed the judge that defendant had already pled and just needed to be sentenced. After a discussion with counsel at the bench, the court asked whether there were any priors alleged. The prosecutor stated that there were prison priors, but the People had agreed to strike them. The court then asked if the priors had already been stricken, and the parties said they had been. The court proceeded to sentence defendant

to three years in prison, as agreed upon. The court did not dismiss the priors at that hearing, and there is no indication in the record that it did so otherwise. Nonetheless, the minute order states that the court ordered them stricken. The record clearly demonstrates that the parties intended the prison prior allegations to be dismissed. It appears to have been an inadvertent clerical error that the prison priors were not actually dismissed.

Generally, a clerical error is one inadvertently made. (*People v. Schultz* (1965) 238 Cal.App.2d 804, 808.) Clerical error can be made by a clerk, by counsel, or by the court itself. (*Ibid.*) A court “has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts. [Citations.]” (*In re Candelario* (1970) 3 Cal.3d 702, 705.) Accordingly, we will modify the judgment to dismiss the eight section 667.5 subdivision (b) enhancement allegations.

We further note that the sentencing minute order reflects that the court awarded defendant credit for time served of “(26 actual + 26 conduct) for a total of 56 days.” The minute order should be corrected to reflect a total of 52 days.² We direct the superior court clerk to generate a new minute order reflecting the dismissal of the prison priors, and the correction in the total of custody credits.

DISPOSITION

The judgment is modified to dismiss the eight section 667.5, subdivision (b) enhancements. The superior court clerk is directed to generate a new minute order reflecting the dismissal, as well as the correction of the custody credits total to 52 days.

² We note that the abstract of judgment correctly reflects the total of 52 days of custody credits.

The clerk is further directed to forward a copy of the new minute order to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

KING
J.

MILLER
J.