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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL QUIROZ GONZALES,

Defendant and Appellant.

F061703

(Super. Ct. No. F07905785)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Carlos A. Cabrera, Judge.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Kathleen A. McKenna, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Poochigian, J., and Detjen, J.

On March 12, 2008, a jury convicted appellant Manuel Quiroz Gonzales of shooting a firearm at an inhabited dwelling (Pen. Code, § 246),¹ and in a separate proceeding, appellant admitted he had suffered a “strike”² and that he had served three separate prison terms for prior felony convictions, within the meaning of section 667.5, subdivision (b). On June 24, 2008, the court imposed a prison term of 10 years.

Appellant appealed, and on appeal, this court found sentencing error, vacated the sentence and remanded for resentencing.

At the resentencing hearing held on December 20, 2010, the court imposed a prison term of 13 years and awarded appellant 504 days of presentence custody credit, consisting of 336 days of actual time credit and 168 days of section 4019 conduct credit. The court stated that its award of presentence custody credit reflected time in custody through June 24, 2008, the date appellant was originally sentenced.

The instant appeal followed. Appellant’s sole contention on appeal is that the court erred in failing to award, in addition to the 504 days of credit reflecting the period through June 24, 2008, custody credit for the period following that date through the date of resentencing. The People concede the point, and we agree. We modify the judgment accordingly.

DISCUSSION

There is no dispute as to the following: Appellant was in custody continuously from July 25, 2007, the date of his arrest, through December 20, 2010, the date of his resentencing, a period of 1,245 days. However, the court’s award of presentence custody

¹ All statutory references are to the Penal Code.

² We use the term “strike” as a synonym for “prior felony conviction” within the meaning of the “three strikes” law (§§ 667, subds. (b)-(i); 1170.12), i.e., a prior felony conviction or juvenile adjudication that subjects a defendant to the increased punishment specified in the three strikes law.

credit includes only 336 days of actual time credit, the period from July 25, 2007, through June 24, 2008, the date of the original sentencing.

Section 2900.1 provides: “Where a defendant has served any portion of his sentence under a commitment based upon a judgment which judgment is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts.”

In explaining the application of section 2900.1, our Supreme Court in *People v. Buckhalter* (2001) 26 Cal.4th 20 (*Buckhalter*), stated that “When ... an appellate remand results in modification of a felony sentence during the term of imprisonment, the trial court must calculate the *actual time* the defendant has already served and credit that time against the ‘subsequent sentence.’ (§ 2900.1.)” (*Id.* at p. 23.) Thus, the court held there that “the trial court, having modified [appellant’s] sentence on remand, was obliged, in its new abstract of judgment, to credit him with all *actual* days he had spent in custody, whether in jail or prison, up to that time.” (*Id.* at p. 37.)

Here too the court modified appellant’s felony sentence on remand. Therefore, under section 2900.1 as construed in *Buckhalter*, the court erred when it failed to recalculate appellant’s presentence credit and award him credit for all days of actual custody *through the date of resentencing*. Thus, appellant is entitled to custody credit for not only the period of 336 days of custody for the period from the date of arrest through the date of the original sentencing, June 24, 2008, but also for the period following the latter date, through the date of resentencing, December 20, 2010, an additional 909 days.

We note that nothing in our decision alters or affects in any way the 168 days of conduct credit awarded by the court pursuant to section 4019. Thus, appellant is entitled to 1,413 days of custody credit, consisting of the following: 336 days of actual time credit for the period from July 25, 2007, through June 24, 2008, plus 168 days of conduct

credit (§ 4019) for that period, plus 909 days for the remainder of appellant's time in custody through the date of resentencing, i.e., from June 25, 2008, through December 20, 2010.

Appellant asks that we remand the matter with directions that the trial court properly determine appellant's custody credit. The People counter that remand is not necessary and that we should simply modify the judgment. We agree with the People. Arriving at the correct credit calculation, which is set forth in the preceding paragraph, does not involve the exercise of sentencing discretion. Therefore, modification of the judgment is appropriate. (§ 1260 [appellate "court may ... modify a judgment ... appealed from"].)

DISPOSITION

The judgment is modified to provide that appellant is awarded custody credit of 1,413 days, consisting of 1,245 days of actual time credit for the period from July 25, 2007, through December 20, 2010, plus 168 days of section 4019 conduct credit. The trial court is directed to file an amended abstract of judgment reflecting this modification and to forward the amended abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.