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

THE PEOPLE,

Plaintiff and Respondent,

v.

KIMBERLY ANN TIECHE,

Defendant and Appellant.

F062944

(Super. Ct. Nos. BF135221B, BF136945A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Louis P. Etcheverry, Judge.

Barbara Coffman, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Levy, J., and Cornell, J.

In case No. BF135221B, appellant, Kimberly Ann Tieche, pled no contest to possession for sale of methamphetamine (count 1/Health & Saf. Code, § 11378), possession of hydrocodone (count 2/Health & Saf. Code, § 11350, subd. (a)) and possession of methamphetamine (count 3/Health & Saf. Code, § 11377, subd. (a)) and admitted two prior conviction enhancements (Health & Saf. Code, § 11370.2, subd. (c)) and two prior prison term enhancements (Pen. Code, § 667.5, subd. (b)).¹ In case No. BF136945A, Tieche pled no contest to possession for sale of methamphetamine and admitted a prior conviction enhancement. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On January 12, 2011, Kern County sheriff's deputies went to Tieche's residence to conduct a parole search. During a search of Tieche, the deputies found \$700 in cash. A search of her purse yielded a vial containing methamphetamine, 31 valium pills, "pay-and-owe documentation," and additional cash. In a chest, the deputies found methamphetamine paraphernalia including baggies, a scale, and prescription bottles containing various pills of controlled substances including hydrocodone (case No. BF135221B).

On January 20, 2011, Tieche bailed out of custody.

On May 19, 2011, in case No. BF135221B, the district attorney filed an amended information charging Tieche with possession for sale of methamphetamine (count 1), possession of hydrocodone (count 2), and possession of methamphetamine (count 3). Each count alleged three prior prison term enhancements and count 1 alleged two prior conviction enhancements.

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

On May 21, 2011, during a routine traffic stop, sheriff's deputies conducted a parole search of Tieche and her car after she admitted she was on parole. The deputies arrested Tieche after finding ziplock baggies, a digital scale, glass narcotic smoking pipes, over \$1,000 in currency, and three baggies containing methamphetamine (case No. BF136945A).

On May 23, 2011, in case No. BF135221B, Tieche pled no contest to the three counts in the information and admitted the two prior conviction enhancements and two prior prison term enhancements.

On May 24, 2011, the district attorney filed a complaint in case No. BF136945A charging Tieche with transportation of methamphetamine (count 1), possession for sale of methamphetamine (count 2), taking drugs or drug paraphernalia into a county jail (count 3/§ 4573.5), possession of drug paraphernalia (count 4/Health & Saf. Code, § 11364), driving while her driving privilege was suspended (count 5/Veh. Code, § 14601.1, subd. (a)), and making an unlawful turn (count 6/Veh. Code, § 22107). Counts 1 and 2 each alleged two prior prison term enhancements and two prior conviction enhancements, and count 3 alleged a prior prison term enhancement.

On June 21, 2011, Tieche pled no contest in case No. BF136945A to possession for sale of methamphetamine and admitted a prior conviction enhancement in exchange for the dismissal of the remaining counts and enhancements and a six-year term which would run concurrent to the ten-year term the court intended to impose in case No. BF135221B.

On July 20, 2011, the court sentenced Tieche in case No. BF135221B to an aggregate 10-year term: the middle term of two years on Tieche's conviction for possession for sale of methamphetamine in count 1 of that case, 2 three-year prior conviction enhancements in that count, a concurrent two-year term in count 2, a stayed two-year term in count 3, and 2 one-year prior prison term enhancements. In case

No. BF136945A, the court sentenced Tieche to an aggregate, concurrent term of six years consisting of the upper term of three years on Tieche's possession for sale of methamphetamine conviction in that case and a three-year prior conviction enhancement.

Tieche's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) However, in a letter filed on October 20, 2011, Tieche appears to complain that she received the ineffective assistance of counsel in case No. BF135221B because her defense counsel advised her to reject the original offer in that case of two years. She also appears to contend that her plea in case No. BF136945A was not voluntary because she thought she would receive a term of four to six years in both cases, she was told she would win on appeal, and her defense counsel frightened her into entering a plea by telling her she could receive an aggregate 16-year term in both cases. These contentions are not cognizable on appeal because they rely on facts outside the record (*In re Rogers* (1980) 28 Cal.3d 429, 237, fn. 6) and she did not obtain a certificate of probable cause (§ 1237.5).

However, our review of the record disclosed that in case No. BF135221B Tieche is entitled to four additional days of presentence custody credit. In case No. BF135221B, the court awarded appellant 136 days of presentence custody credit consisting of 68 days of presentence actual custody credit and 68 days of presentence conduct credit.² This award, however, did not include two days of presentence actual custody credit and two days of corresponding presentence conduct credit for the two days Tieche spent in custody on May 21 and 22, 2011. Further, since Tieche was out on bail in case

² Tieche's presentence custody credit was apparently calculated pursuant to the version of section 2933 in effect when she was sentenced which provided for one for one credit for defendants sentenced to prison. (Former § 2933, subd. (e), Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010.)

No. BF135221B when she was arrested on May 21, 2011 in case No. BF136945A, there is no reason to believe that she was not held on both cases when she was arrested on that date. Therefore, since it appears Tieche was in custody in both cases on May 21 and 22, 2011, and the court imposed concurrent terms, in case No. BF135221B Tieche is entitled to two additional days of presentence actual custody credit and two additional days of presentence conduct credit. (*People v. Schuler* (1977) 76 Cal.App.3d 324, 330; also cf. *People v. Kunath* (2012) 203 Cal.App.4th 906, 908.) In view of the foregoing, we will increase Tieche's award of presentence custody credit in case No. BF135221B from 136 days to 140 days consisting of 70 days of actual custody credit and 70 days of presentence conduct credit.

Further, following an independent review of the record we find that with the exception of the credit issue discussed above, no other reasonably arguable factual or legal issues exist.

DISPOSITION

In case No. BF135221B, Tieche's award of presentence custody credit is increased from 136 days to 140 days consisting of 70 days of presentence actual custody credit and 70 days of presentence conduct credit. The trial court is directed to prepare an amended abstract of judgment consistent with this opinion and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.