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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH MICHAEL HAMMOND,

Defendant and Appellant.

F063181

(Super. Ct. No. F10904510)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don Penner, Judge.

Deborah Prucha, 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., Poochigian, J. and Franson, J.

Appellant, Joseph Michael Hammond, appeals from a judgment entered after he pled guilty to vehicle theft (Veh. Code, § 10851, subd. (a)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 13, 2010, at approximately 4:23 a.m., Fresno County sheriff's deputies initiated a traffic stop of a 1988 Toyota pickup driven by Hammond because it did not have a front license plate. A check with dispatch disclosed the truck's rear license plate had been reported lost or stolen from a 1996 Toyota pickup. When the deputies contacted Hammond, he admitted that the truck he was driving was itself stolen, which the deputies subsequently confirmed. During a search of Hammond, the deputies found a syringe.

On September 2, 2010, the district attorney filed a complaint charging Hammond with vehicle theft (count 1/Veh. Code, § 10851, subd. (a)), receiving a stolen vehicle (count 2/Pen. Code, § 496d, subd. (a)¹), possession of a smoking device (count 3/Health & Saf. Code, § 11364), and a prior prison term enhancement (§ 667.5, subd. (b)). On November 15, 2010, Hammond pled guilty to the vehicle theft charge in exchange for a bid of 16 months in prison and the dismissal of the remaining counts and enhancement.

On January 12, 2011, Hammond failed to appear for his sentencing hearing.

On July 18, 2011, the court sentenced Hammond to a 16-month term in the instant case, which it ordered to run concurrent to the sentence Hammond was already serving on a case out of Madera County.

Hammond'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 November 15, 2011, Hammond appears to contend that he is entitled to presentence

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

custody credit for the time that he spent in local custody from June 14, 2011, through the date of his sentencing in the instant matter on July 18, 2011, even though during this period of time he was already serving a sentence on a Madera County case. Hammond is mistaken.

On February 7, 2011, Hammond was sentenced in Madera County to a 16-month term on his conviction for receiving a stolen vehicle (Madera County Superior Court case No. MCR039673). On June 14, 2011, Hammond was returned from the Department of Corrections and Rehabilitation to Fresno County to be sentenced in the instant case. Since he was already serving the sentence imposed on his Madera County case, Hammond was not entitled to presentence custody credit in the instant case for the time he was in custody from June 14, 2011, through July 18, 2011. (*In re Rojas* (1979) 23 Cal.3d 152, 154.)

Nevertheless our review of the record disclosed that Hammond is entitled to two additional days of presentence custody credit. In addition to the above days for which he was not entitled to presentence custody credit, Hammond was in custody in this matter on August 13, 2010 (the day of his arrest in this matter), October 11, 2010, and November 9, 2010. At appellant's sentencing hearing on July 18, 2011, the court awarded appellant three days of presentence actual custody credit and 0 days of presentence conduct credit.

On August 13, 2010, when appellant committed the underlying offense in this matter, section 4019, in pertinent part, provided:

“(b)(1) Except as provided in Section 2933.1 and paragraph (2), subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp. ¶ ... ¶

“(c)(1) Except as provided in Section 2933.1 and paragraph (2), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this 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. ¶ ... ¶

“(f) *It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody, except that a term of six days will be deemed to have been served for every four days spent in actual custody for persons described in paragraph (2) of subdivision (b) or (c).*” (Stats. 2009-2010, 3rd Ex.Sess., ch. 28, § 50, eff. Jan. 25, 2010, italics added.)²

Since appellant was committed for more than four days in the instant case and served three days in presentence custody, he is entitled to an additional two days of presentence conduct credit under the version of section 4019 in effect when he committed the underlying offense in this matter. (Cf. *People v. Dieck* (2009) 46 Cal.4th 934, 943 [defendant committed for more than six days who served five days in presentence actual custody was entitled to two days of presentence conduct credit under an earlier version of section 4019].)

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

DISPOSITION

Hammond’s award of presentence custody credit is increased from three days to five days consisting of three days of presentence actual custody credit and two 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.

² So far as the record shows, appellant is not a person described in paragraph 2 of subdivision (b) or (c) of section 4019.