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

THE PEOPLE,

Plaintiff and Respondent,

v.

ARNULFO NUNEZ GAITAN,

Defendant and Appellant.

F063640

(Super. Ct. No. VCF205256)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

Francisco Valentin Cortés, 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 Gomes, J.

Appellant, Arnulfo Nunez Gaitan, appeals from an order by the trial court denying his motion for two-for-two presentence custody credit pursuant to the version of Penal Code section 4019¹ in effect when he filed the motion. We will find that the court order denying his motion was not an appealable order and dismiss Gaitan's appeal.

FACTUAL AND PROCEDURAL HISTORY

On August 25, 2008, in exchange for a stipulated term of seven years, Gaitan pled no contest to sale of methamphetamine (count 3/Health & Saf. Code, § 11379, subd. (a)), transportation of methamphetamine (count 4/Health & Saf. Code, § 11379, subd. (a)), transportation of cocaine (count 6/Health & Saf. Code, § 11352, subd. (a)), and two counts each of possession for sale of methamphetamine (counts 5 & 8/Health & Saf. Code, § 11378), possession for sale of cocaine (counts 7 & 11/Health & Saf. Code, § 11351), and child abuse (counts 9 & 10/§ 273a, subd. (a)). Gaitan also admitted a weight enhancement (§ 1203.073) and an arming enhancement (§ 12022, subd. (c)) in count 8.

On September 23, 2008, the trial court sentenced Gaitan to an aggregate seven-year term: the middle term of two years on his possession of methamphetamine conviction in count 8, a four-year arming enhancement in that count, a consecutive one-year term on count 3 (one-third the middle term of three years), and concurrent terms on the remaining counts.

Appellant's original abstract of judgment erroneously indicated that appellant was sentenced to an aggregate six-year term, that he received a concurrent, rather than a consecutive term on count 3, and that the court imposed a concurrent two-year term, rather than a concurrent four-year term. On July 12, 2011, the trial court issued an amended abstract of judgment and an amended minute order for Gaitan's sentencing hearing that corrected these errors.

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

On August 22, 2011, Gaitan filed a motion requesting the court to modify his abstract of judgment and the minute order of his sentencing hearing to reflect a sentence of six years. Gaitan also requested that the court grant him two-for-two presentence conduct credit pursuant to the version of section 4019 then in effect (Stats. 2011, ch. 15, § 482, eff. Apr. 4, 2011). In his moving papers, Gaitan contended that his conviction was not yet final because the court modified his sentence when it issued the corrected abstract of judgment and minute order. Therefore, argued Gaitan, he was entitled to the more generous presentence conduct credit provided by the version of section 4019 then in effect rather than the four-for-six conduct credit provided by the version of section 4019 (Stats. 1982, ch. 1234, § 7, p. 4553) in effect when he was originally sentenced.²

On September 7, 2011, the court denied Gaitan's motion. In its ruling, however, the court did not specifically address Gaitan's request for two-for-two presentence conduct credit.

On September 21, 2011, Gaitan filed a motion requesting the court to address his request for two-for-two presentence conduct credit and for it to issue a corrected abstract of judgment.

On September 27, 2011, the court denied Gaitan's motion.

On October 13, 2011, Gaitan filed a notice of appeal.

On March 20, 2012, Gaitan's appellate counsel filed an opening 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* (1979) 25 Cal.3d 436.)

²Gaitan was originally awarded 146 presentence custody credits, consisting of 98 days of presentence actual custody credit and 48 days of presentence conduct credit. In his motion, Gaitan argued that he was entitled to an additional 50 days of presentence conduct credit, for a total award of 196 days of presentence custody credit.

DISCUSSION

“A trial court has inherent power to correct clerical errors in its records so as to make these records reflect the true facts. [Citation.] The court may correct these errors on its own motion or upon the application of the parties. [Citation.]... [I]f the minutes or abstract of judgment fails to reflect the judgment pronounced by the court, the error is clerical and the record can be corrected at any time to make it reflect the true facts. [Citation.]” (*People v. Little* (1993) 19 Cal.App.4th 449, 451-452.) Thus, the trial court here acted within its jurisdiction when it issued an amended abstract of judgment and a corrected minute order on July 12, 2011, that accurately reflected the judgment that it imposed on September 23, 2008.

Section 1237 provides:

“An appeal may be taken by the defendant: [¶] (a) From a final judgment of conviction except as provided in Section 1237.1 and Section 1237.5. A sentence, an order granting probation, or the commitment of a defendant for insanity, the indeterminate commitment of a defendant as a mentally disordered sex offender, or the commitment of a defendant for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment the court may review any order denying a motion for a new trial. [¶] (b) From any order made after judgment, affecting the substantial rights of the party.”

The trial court, here, did not modify appellant’s sentence when it corrected the clerical errors in Gaitan’s abstract of judgment and the minute order of appellant’s September 23, 2008, sentencing hearing. Thus, Gaitan was not entitled to a recalculation of his presentence conduct credit in accord with the version of section 4019 in effect at the time on the theory that his conviction had not become final because the court modified his sentence.

Further, the court’s order denying Gaitan the additional presentence conduct credit he sought did not come within the ambit of section 1237, subdivision (a). Moreover, since Gaitan did not have a legal basis for filing the motion to modify his award of presentence conduct credit, the order denying Gaitan’s motion did not come within the

ambit of section 1237, subdivision (b) either because it did not affect Gaitan's substantial rights. Consequently, we will dismiss Gaitan's appeal because the order he appeals from is not an appealable order. (*People v. Mendez* (2012) 209 Cal.App.4th 32, 34.)

DISPOSITION

The appeal is dismissed.