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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ROLANDO OCHOA,

Defendant and Appellant.

F063973

(Super. Ct. Nos. VCF80477, VCF96909)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Joseph Kalashian, Judge.

Robert L.S. Angres, 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., Cornell, J., and Gomes, J.

On January 28, 2002, in case No. VCF80477, appellant, Jose Rolando Ochoa, pled no contest to unlawful sexual intercourse with a person under the age of 18 (count 1/Pen. Code, § 261.5),<sup>1</sup> sexual penetration of a person under the age of 18 (count 3/§ 289, subd. (h)), and furnishing a controlled substance to a minor (count 5/Health & Saf. Code, § 11380, subd. (a)).

On February 25, 2002, in case No. VCF80477, the court sentenced Ochoa to a six-year term consisting of the middle term of six years on count 5 and concurrent 2-year terms on counts 1 and 3. The court then suspended execution of sentence and placed Ochoa on probation for three years on condition that he serve a year local time.

On September 25, 2002, in case No. VCF96909, Ochoa pled no contest to possession of a concealed firearm in a vehicle (§ 12025, subd. (a)(3)) and admitted an allegation that he had a prior conviction within the meaning of the three strikes law (§ 667, subds. (b)-(i)) in exchange for the dismissal of another count and a lid of 16 months (one-third the midterm of two years doubled). In case No. VCF96947, Ochoa pled no contest to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and admitted an allegation that he had a prior conviction within the meaning of the three strikes law in exchange for a lid of 16 months (one-third the midterm of two years doubled). Ochoa also admitted violating his probation in case No. VCF80477 by being in possession of a loaded firearm.

On October 30, 2002, in case No. VCF80477, the court terminated Ochoa's probation and lifted the stay on the previously imposed sentence of six years. The court also imposed a consecutive 16-month term in a case No. VCF96909 and a concurrent 16-month term in case No. VCF96947.

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<sup>1</sup> Unless otherwise indicated all further statutory references are to the Penal Code.

On August 27, 2003, the court modified the sentence in case No. VCF96947 from a concurrent 16-month term to a consecutive 16-month term. Additionally, in case No. VCF96909, the court modified the sentence from a consecutive 16-month sentence to a concurrent four-year term and it awarded Ochoa 93 days of presentence custody credit consisting of 63 days of presentence actual custody credit and 30 days of presentence conduct credit. The amended abstract of judgment issued by the court, however, did not memorialize this award of presentence custody credit.

On July 7, 2011, appellant filed a request for an “amendment/modification of time/credits.”

On October 20, 2011, the court ordered the award of presentence custody credits in case No. VCF96909 amended to reflect 93 days of presentence custody credit consisting of 63 days of presentence actual custody credit and 30 days of presentence conduct credit.

On November 30, 2011, Ochoa filed a timely appeal.

Ochoa’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* (1979) 25 Cal.3d 436.) Ochoa has not responded to this court’s invitation to submit additional briefing.

Following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.