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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH ANTHONY SOTELO,

Defendant and Appellant.

F064497

(Super. Ct. Nos. 1408619 &
1417342)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Linda A. McFadden and Ricardo Cordova, Judges.†

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

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

† Judge McFadden presided over the plea and sentencing hearings; Judge Cordova ruled on the motion to correct abstract of judgment.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Tiffany J. Gates, Deputy Attorneys General, for Plaintiff and Respondent.

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Appellant Joseph Anthony Sotelo appealed from the trial court's denial of his motion to correct presentence credits. He contended he was entitled to additional presentence conduct credit under the amendments to Penal Code section 4019.¹ Respondent agreed appellant was entitled to additional presentence credit but disagreed about the amount due. After the Supreme Court decided *People v. Brown* (2012) 54 Cal.4th 314, Sotelo conceded that respondent's calculation of his presentence conduct credit was correct. He waived his right to oral argument and requested this court issue an opinion awarding him the additional 196 days of conduct credit forthwith. We do so.

PROCEDURAL HISTORY

In November 2009, in Stanislaus Superior Court case number 1408619, Sotelo was charged with two drug offenses, a prior drug offense, and four prior prison term enhancements. He pled no contest to one count and admitted the prior prison term allegations in exchange for a stipulated two-year prison term. Pursuant to a *People v. Cruz* (1988) 44 Cal.3d 1247 waiver, he was released on his own recognizance pending sentencing. He violated the terms of the agreement by failing to appear for sentencing.

In April 2010, in Stanislaus Superior Court case number 1417342, Sotelo was found with drugs and returned to custody. In January 2011, he pled guilty to possession of methamphetamine and a glass pipe and admitted an on-bail enhancement.

On May 13, 2011, the court sentenced Sotelo on both cases. In case number 1408619, the court imposed the middle term of three years for the drug count and an additional year for one prior prison term enhancement. The court awarded 686 days of

¹ Further statutory references are to the Penal Code.

presentence credit—458 days of actual time credit plus 228 days of conduct credit. In case number 1417342, the court imposed a consecutive eight-month term (one-third of the middle term) for possession of methamphetamine, plus a consecutive two-year term for the on-bail enhancement. The trial court did not award presentence credit in this case. The trial court denied Sotelo's subsequent motion to correct his abstract of judgment without prejudice to a subsequent request after the Supreme Court decided the section 4019 retroactivity issue. Sotelo appealed that order.

DISCUSSION

Sotelo contended (1) he was entitled to day-to-day conduct credit for his 2009 case under retroactive application of the most recent amendment to the presentence credit statutes and (2) he was entitled to day-to-day conduct credit on the 2010 case under section 2933, former subdivision (e)(1), which was in effect when he was sentenced in 2011.

(1) Retroactive application

In *People v. Brown, supra*, 54 Cal.4th at page 318, the Supreme Court rejected Sotelo's argument that the January 25, 2010, amendment to section 4019 retroactively benefitted prisoners who served local custody time before that date. In a letter to the court dated July 31, 2012, Sotelo conceded the point and withdrew his first contention.

(2) Custody Credits

Respondent submits, and Sotelo agrees, that his presentence conduct credits should be calculated as follows. We agree.

Sotelo was in local custody from September 29, 2009, the date of his arrest in case number 1408619, to November 30, 2009, when he was released pending sentencing. He was taken into custody in case number 1417342 on April 14, 2010, and sentenced on both cases on May 13, 2011. Sotelo's periods of confinement were governed by different versions of section 4019 and he earned conduct credit at different rates.

The version of section 4019 in effect during Sotelo's 2009 local custody entitled him to two days of conduct credit for every four days in custody. Sotelo spent 63 days in custody so was entitled to 63 days of actual time credit and 30 days of conduct credit ($63 \div 4 = 15 \times 2 = 30$) for a total of 93 days.

The version of section 4019 in effect during Sotelo's 2010 to 2011 local custody entitled him to two days of conduct credit for every two days in custody. Sotelo spent 395 days in custody so was entitled to 395 days of actual time credit and 394 days of conduct credit ($395 \div 2 = 197 \times 2 = 394$) for a total of 789 days.

Together, Sotelo was entitled to a total of 882 days ($93 + 789 = 882$) of presentence credit. The trial court awarded Sotelo only 686 days of credit so he is entitled to an additional 196 days of conduct credit ($686 + 196 = 882$) for a total of 882 days of presentence credit.

DISPOSITION

The judgment is modified to change the award of presentence custody credits from 686 days to 882 days. The trial court is directed to amend the abstract of judgment accordingly and to send a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.