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

THE PEOPLE,

Plaintiff and Respondent,

v.

RAISSA RASHEYL SHEARS,

Defendant and Appellant.

F066723

(Super. Ct. Nos. 12CM0582 & 12CM3709)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

S. Lynne Klein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Daniel B. Bernstein and Kevin L. Quade, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Detjen, Acting P.J., Franson, J., and Peña, J.

In case No. 12CM0582 appellant, Raissa Rasheyl Shears, pled guilty to two counts of commercial burglary (Pen. Code, § 459)¹ and was sentenced to an aggregate term of two years eight months, the middle term of two years on one burglary count and a consecutive eight-month term (one-third the middle term) on the second burglary count.

In case No. 12CM3709 Shears pled guilty to escape by force or violence (§ 4532, subd. (b)(2)).

On February 13, 2013, the court sentenced Shears to the mitigated term of two years, which it ran consecutive to the term she was already serving in case No. 12CM0582.

On appeal, Shears contends: (1) the court committed sentencing error; and (2) her abstract of judgment does not accurately reflect her sentence. We reject these contentions. However, our review of the record disclosed that the court erred in its award of presentence custody credit. We modify the judgment to correct this error and affirm as modified.

FACTS

On February 22, 2012, Shears was detained by a loss prevention officer after she walked out of a Kohl's store in Hanford without paying for several items. Inside a diaper bag she was carrying the officer found \$449 worth of items from Kohl's, Ross, and Wet Seal stores. Shears subsequently admitted stealing these items (case No. 12CM0582).

On February 23, 2012, the district attorney filed a complaint in case No. 12CM0582 charging Shears with three counts of commercial burglary and a prior prison term enhancement (§ 667.5, subd. (b)).

On February 29, 2012, Shears pled guilty to two counts of commercial burglary in exchange for the dismissal of the remaining count and enhancement.

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

On March 28, 2012, pursuant to section 1170, subdivision (h)(1) & (2), the court sentenced Shears to a local term of two years eight months, the middle term of two years on one count and a consecutive eight months on the second count (one-third the middle term of two years). The court ordered Shears to serve one year four months in custody and the remainder of the time on mandatory supervision.

On July 6, 2012, while serving her custody time on house arrest, Shears forcibly removed her GPS device and absconded.

On November 6, 2012, the district attorney filed an information in case No. 12CM3709 charging Shears with escape by force (count 1), malicious destruction of property (§ 594, subd. (b)(1)) (count 2), and three prior prison term enhancements.

On November 15, 2012, the probation department filed a report alleging that Shears violated the terms and conditions of her mandatory supervision by committing a new felony violation.

On November 29, 2012, Shears pled guilty to escape by force or violence in exchange for the dismissal of the remaining count and enhancements and she admitted violating the terms of her mandatory supervision.

On February 13, 2013, the court sentenced Shears in both cases to an aggregate prison term of four years eight months as follows:

“At this point, the Court in 12CM0582, finding the defendant in violation of her mandatory supervision, will just order that the entire sentence be served, two years eight months, giving her credits for 536 days consisting of 268 days actual and 268 days good and work for a total of 536. [¶] ... [¶]

In Case 12CM3709, the court will sentence the defendant to the mitigated term of two years. [¶] The court will note that there’s no time credits on this matter since it will now run consecutive to the sentence imposed in 12CM0582 by operation of law.”

DISCUSSION

Shears's Sentence

Shears cites section 1170.1, subdivision (a) and California Rules of Court, rule 4.452² to contend that the court was required to pronounce a single aggregate term when it sentenced her and that it erred by its failure to do so. Shears is wrong.

Section 1170.1, subdivision (a) provides:

“Except as otherwise provided by law, ... when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses. Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in a county jail pursuant to subdivision (h) of Section 1170.” (Italics added.) (Accord, rule 4.452.)

Section 4532, subdivision (b)(2), in pertinent part, provides that a person convicted of an escape by force or violence “is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and *the term shall not be subject*

² All further references to rules are to the California Rules of Court.

to reduction pursuant to subdivision (a) of Section 1170.1, ... that term to commence from the time the prisoner otherwise would have been discharged from jail.” (Italics added.)

Here, the court imposed a sentence of two years on one of Shears’s convictions for commercial burglary in case No. 12CM0582, a consecutive eight-month term (one-third the middle term of two years) on her other commercial burglary conviction in that case, and a full consecutive two-year term pursuant to section 4532, subdivision (b)(2) on Shears’s escape conviction in case No. 12CM3709 for a total aggregate term of four years eight months.

Shears concedes that the total sentence is not erroneous. (See *People v. Scott* (1993) 17 Cal.App.4th 1383, 1384.) Nevertheless, she contends that the court was required to pronounce a single aggregate term and specify the principal term. The court, however, implicitly did exactly this when it imposed an aggregate term of four years eight months that complied with the mandatory sentencing guidelines of section 1170.1, subdivision (a), rule 4.452, and section 4532 subdivision (b)(2). Accordingly, we reject Shears’s claim of sentencing error.

Shears’s Abstract of Judgment

Shears contends that if this court finds that the trial court made implied orders concerning the aggregate, principal and subordinate terms, the abstract of judgment should be corrected to “specify” the aggregate sentence and the principal and subordinate terms. We disagree.

The court memorialized all the pertinent elements of Shears’s conviction and sentencing in case No. 12CM3709 (escape by the use of force or violence) on form CR-290.1 (Rev. July 1, 2012) which has the following heading, “Felony Abstract of Judgment—Determinate Single, Concurrent, or Full-Term Consecutive Count Form[.]”

(Original all in capital letters.) Section 8 of this abstract of judgment, which is for other orders, contains the following entry:

“Sentence to run consecutive with 12CM0582 - Mandatory supervision case pursuant to 1170(H)PC which defendant was sentenced on 3/28/12 to 2 years and 8 months. Court split the sentence ordering the defendant to serve 1 year 4 months & the remaining time was mandatory supervision. On 02/13/13 court ordered the defendant to complete the remaining time of the mandatory supervision in custody with 536 total credits consisting of 268 actual plus 268 good/work time. All fines/fees remain payable.” (Original all in capital letters.)

The abstract does not specifically state that the court sentenced Shears to an aggregate term in both cases of four years eight months or which term is the principal term and which are subordinate terms. However, Shears has not cited any authority which supports her assertion that it was error for the abstract not to specify these terms. Nor has Shears explained how the failure to do so prejudiced her since it is clear from the information in form CR-290.1 that she was sentenced to an aggregate term of four years eight months consisting of an aggregate term of two years eight months in case No. 12CM0582 and a full consecutive term of two years in case No. 12CM3709.

Moreover, although the abstract of judgment must summarize the oral rendition of judgment without adding or subtracting from it (*People v. Mesa* (1975) 14 Cal.3d 466, 471) Shears’s abstract of judgment does exactly this, notwithstanding the omissions Shears complains about. Accordingly, we reject Shears’s contention that her abstract of judgment should be corrected to specify her aggregate sentence and the principal and subordinate terms.

The Presentence Custody Credit Issue

As noted earlier, in case No. 12CM0582 the court awarded appellant 536 days of presentence sentence custody credit consisting of 268 days of presentence actual custody credit and 268 days of presentence conduct credit. This award included conduct credit for time Shears spent on home detention on an electronic monitor from May 9, 2012,

through July 6, 2012, when she cut off her monitor and absconded.³ Shears was not entitled to conduct credit for the time she was on home detention on the electronic monitoring program. (*People v. Silva* (2003) 114 Cal.App.4th 122, 128-129.) Thus, the court erred when it awarded Shears 58 days of conduct credit for the 58 days she was on home detention on the electronic monitor from May 10, 2012, through July 6, 2012.⁴ In view of the foregoing, we will reduce Shears's award of presentence custody credit from 536 days to 478 days (536 days - 58 days = 478 days) consisting of 268 days of presentence actual custody credit and 210 days (268 days - 58 days = 210 days) of presentence conduct credit.

DISPOSITION

Shears's award of presentence custody credit in case No. 12CM0582 is modified to reduce her award of presentence custody credit from 536 days to 478 days as calculated above. The trial court is directed to issue an amended abstract of judgment in case No. 12CM3709 that in section 8 memorializes this amended award of presentence custody credit in case No. 12CM0582 and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

³ By letter dated August 27, 2014, we advised the parties that they could submit a letter brief addressing whether Shears was entitled to presentence conduct credit for the days she was on house arrest on the electronic monitor. Neither party submitted a brief.

⁴ Since the record indicates appellant was in a secure placement, i.e., county jail, for part of the day on May 9, 2012, it appears she was entitled to presentence conduct credit for that day.