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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS AYALA,

Defendant and Appellant.

G050982

(Super. Ct. No. 11WF1121)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed as modified.

Allen G. Weinberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Adrienne S. Denault, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

This case comes back to us following our remand to the trial court with directions to hold a new hearing under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 with regard to the honesty of Officer Valencia. As set forth in our prior opinion (*People v. Ayala* (Jun. 24, 2014, G048613) [nonpub.opn]), “[a] jury convicted defendant Thomas Ayala of 10 counts of committing a lewd act on a child under age 14 (Pen. Code, § 288, subd. (a); all further statutory references are to this code), four counts of committing a lewd act on a 14 or 15-year-old child who is at least 10 years younger than defendant (§ 288, subd. (c)(1)), and one count of forcible rape (§ 261, subd. (a)(2)). It also found true allegations defendant had substantial sexual conduct with minors under the ages of 11 and 14. (§ 1203.066, subd. (a)(8).) The trial court sentenced defendant to 45 years to life in prison.”

In our prior opinion, we remanded the case because “the court impermissibly deferred to the [custodian of record’s] judgment about whether disclosure [of Officer Valencia’s personnel records] was appropriate and did not make a record of the documents that were subject to his determination[, . . . leav[ing] us unable to conduct any meaningful review on appeal.” (*People v. Ayala, supra*, G048613.) Upon remand, the trial court conducted a new *Pitchess* hearing and stated in open court that it had “reviewed every record, and including things which would normally not be germane for a *Pitchess* motion, like references in the background. Three files, one is the preemployment, one is the current personnel file, and then there were some internal affairs files. The court found nothing negative in any way in respect to the honesty of Officer Valencia.”

Defendant requests that we examine “the sealed records that were reviewed by the trial court to determine if there was any discoverable information.” Under *Pitchess*, once good cause has been shown for discovery of police personnel records, the

custodian of personnel records is obligated to bring “all ‘potentially relevant’” materials to the court and state what other documents in the personnel file were not brought and why. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1229.) The trial court reviews the potentially relevant materials in camera, in the presence of a court reporter, determines what must be produced, and makes an adequate record of the materials it considered. (*Ibid.*) We review the court’s *Pitchess* ruling for abuse of discretion. (*People v. Myles* (2012) 53 Cal.4th 1181, 1209.)

We have only the sealed transcript of the trial court’s in camera review, in which the court “state[d] for the record what documents it examined.” (*People v. Mooc, supra*, 26 Cal.4th at p. 1229.) This “sealed transcript . . . is adequate for purposes of conducting a meaningful appellate review.” (*People v. Myles, supra*, 53 Cal.4th at p. 1209.) Having independently reviewed the sealed transcript, we conclude the trial court did not abuse its discretion in refusing to disclose any records from Officer Valencia’s personnel file.

Defendant also argues, and the Attorney General agrees, his sentence should be modified to reflect 777 days of actual custody credit. We agree. There are 777 days between the time defendant was arrested on May 7, 2011 and his sentencing date of June 21, 2013. (§ 2900.5, subd. (a).) Defendant correctly acknowledges his conviction of a violent felony caps his ability to accrue conduct credit to 15 percent (§ 2933.1, subd. (a)) and thus the trial court was correct in awarding him 116 days of such credit.

The trial court is directed to prepare an amended abstract of judgment to reflect defendant is awarded 777 of actual custody credit. That, along with the 116 days of conduct credit already accrued gives defendant a total of 893 days credit. Once modified, the trial court shall forward a copy of the modified abstract of judgment to the

Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.