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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.

MINH ANH LE,

Defendant and Appellant.

G051353

(Super. Ct. No. 12WF2602)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Christopher J. Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Affirmed and remanded with directions.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Kristine A. Gutierrez, and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

Minh Anh Le appeals from the trial court's postjudgment order granting his petition to recall his sentence and reduce his drug possession conviction to a misdemeanor. Le argues the trial court erred by imposing one year of parole and the court was required to apply any excess custody credits to reduce his parole period.

After briefing was complete, the California Supreme Court filed its opinion in *People v. Morales* (2016) 63 Cal.4th 399 (*Morales*). We invited the parties to file supplemental letter briefs on the effect of *Morales* on this case. They have done so. Neither of Le's contentions have merit. We affirm the postjudgment order and remand the matter with directions.

FACTS

In October 2012, Le pleaded guilty to possession of a controlled substance, cocaine (Health & Saf. Code, § 11350, subd. (a)), and two misdemeanors, and admitted prior strike and prison term allegations. The factual basis for the plea was that "on [December 29, 2012], [he] willfully [and] unlawfully possessed a usable quantity of cocaine[.]" The trial court sentenced Le to prison for 16 months, with 14 days credit. The court imposed a \$240 restitution fine (§ 1202.4, subd. (b)), \$240 parole revocation restitution fine (§ 1202.45), \$50 lab fee (Health & Saf. Code, § 11372.5), \$40 court operations fee (§ 1465.8), and \$30 conviction fee (Gov. Code, § 70373, subd. (a)(1)).

In October 2013, Le was released on postrelease community supervision (PRCS). On a couple occasions, Le was arrested, found to be in violation of PRCS, and served jail time.

On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act (the Act), which became effective the following day. (See § 1170.18.) In December 2014 and again in January 2015, Le filed petitions for resentencing or for reduction of count 1 to a misdemeanor (Pen. Code, § 1170.18). The court granted the second petition. The court recalled Le's sentence and sentenced him to 365 days in county jail, with credit for time served. Based on Le's criminal history,

which demonstrated a “continuing course of criminality,” the court also placed appellant on one year of parole. Le filed a notice of appeal.

On June 26, 2015, this court filed its opinion in *People v. Morales* (2015) 238 Cal.App.4th 42, review granted August 26, 2015, No. S228030, holding as relevant here, excess custody credits do reduce a parole period. Less than one month later, on July 23, 2015, during briefing, the trial court, relying on our decision in *People v. Morales, supra*, 238 Cal.App.4th 42, discharged Le from parole after applying his excess custody credits to his parole period. The following month, we granted Le’s request for judicial notice of the trial court’s order. We also informed the parties we were considering dismissing the appeal as moot and invited either party to file an objection.

The Attorney General objected to dismissal because the trial court’s order discharged Le from parole was null and void for lack of jurisdiction. After Le responded, we filed an order stating we would decide the issue of mootness in conjunction with preparation of the opinion.

DISCUSSION

PRCS

Le contends the trial court erred by sentencing him pursuant to section 1170.18, subdivision (a), and imposing one year of parole, because he had completed his prison term and PRCS was not part of his sentence. We disagree.

The trial court properly resentenced Le pursuant to section 1170.18, subdivision (a), because he had not completed PRCS and, therefore, was “currently serving a sentence” for a qualifying felony conviction. (§ 1170.18, subd. (a) [“A person currently serving a sentence” for a conviction for a qualifying felony may petition for recall of sentence and resentencing]; see *Morales, supra*, 63 Cal.4th at pp. 403, 409 [defendant subject to PRCS].) Although the Supreme Court’s decision in *Morales* did not expressly decide whether a person who has completed a prison term and been placed on PRCS is still “serving a sentence” (§ 1170.18, subs. (a), (d)), this court concluded

PRCS is part of the sentence, and this holding is implicit in *Morales*. Le has presented no compelling argument for us to depart from this view. (See *People v. Nuckles* (2013) 56 Cal.4th 601, 608-609 [period of parole or PRCS “constitutes part of the punishment for the underlying crime”].) Thus, because Le was on PRCS, the trial court did not abuse its discretion in ordering him to serve one year of parole.

Excess Custody Credits

Le argues the trial court should have applied any excess custody credits to reduce his parole period. This claim was recently rejected by the California Supreme Court in *Morales*.

Morales, supra, 63 Cal.4th at pages 404-405, stated as follows: “At issue here is the proper interpretation of section 1170.18, subdivision (d), which provides: ‘A person who is resentenced pursuant to subdivision (b) *shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence*, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. Such person is subject to [s]ection 3000.08 parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county in which the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.’ (Italics added.) On its face, this language seems to require the one-year parole period subject to the court’s discretion to order otherwise. It states that the person shall receive credit for time served *and* shall be subject to parole.” The Supreme Court held, “We conclude that credit for time served does not reduce the parole period.” (*Morales, supra*, 63 Cal.4th at p. 403.) Based on *Morales*, Le was not entitled to have any excess custody credits reduce his parole period.

Le also contends he was entitled to have any excess custody credits reduce his fines and fees. The version of section 2900.5, subdivision (a), in effect when Le committed the offenses in September 2012 provided in relevant part as follows: “[A]ll

days of custody of the defendant, including days served as a condition of probation in compliance with a court order . . . shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than thirty dollars (\$30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine on a proportional basis, including, but not limited to, base fines and restitution fines.”

We agree Le is entitled to a recalculation of his fines and fees and an offset due to custody credits. (*People v. Morris* (2015) 242 Cal.App.4th 94, 101-102 [under § 2900.5, subd. (a), defendant’s excess custody credits may be applied to reduce amount of court-ordered fines]; see Couzens & Bigelow, Proposition 47 “The Safe Neighborhoods and Schools Act” (May 2016), <<http://www.courts.ca.gov/documents/Prop47Information.pdf>> p. 86 [excess credits may be applied to reduce certain fees and fines].) On remand, the trial court shall recalculate the amounts owed.

Mootness

Le asserts the appeal is moot and whether the trial court erred in discharging him from parole is not before this court. In her supplemental briefing, the Attorney General contends the trial court’s order releasing Le from parole was null and void because the court did not have jurisdiction and our decision in *People v. Morales, supra*, 238 Cal.App.4th 42, was not final. The Attorney General, claiming Le has an additional five- and one-half months of parole to serve, suggests we remand the matter to the trial court to fashion an appropriate remedy.

While we commend the trial court's initiative in modifying Le's sentence to comport with *Morales, supra*, 238 Cal.App.4th 42, we conclude the court lacked jurisdiction to make the modification because this appeal was pending. (*People v. Scarbrough* (2015) 240 Cal.App.4th 916, 929-930 [trial court lacked jurisdiction to recall sentence and resentence under proposition 47 while appeal was pending (*Scarbrough*); but see *People v. Awad* (2015) 238 Cal.App.4th 215, 223-224 [limited remand to allow trial court to conduct proposition 47 postconviction hearing proper].) There was no limited remand in this case. Although section 1237.1 gives trial courts concurrent jurisdiction to correct errors involving the calculation of presentence credits while an appeal is pending, that section applies only to mathematical or clerical mistakes, not substantive issues like the ones involved in this case. (*Scarbrough, supra*, 240 Cal.App.4th at p. 923.) Therefore, the modification order is void. (*Id.* at p. 920.)

DISPOSITION

We affirm the postjudgment order and remand the matter with directions.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.