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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.

BOBBY DEAN OUTLAW,

Defendant and Appellant.

G051424

(Super. Ct. No. 11HF2665)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Vickie L. Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Leonard J. Klaif, 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, Lynne G. McGinnis and Eric A. Swenson, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Bobby Dean Outlaw appeals from a Proposition 47 resentencing order. He contends the trial court erred in sentencing him to one year of parole under Penal Code section 1170.18, subdivision (d), (all further undesignated statutory references are to this code) because he already had completed his felony prison sentence. He also argues the trial court erred in failing to apply his excess custody credits to reduce his parole term, as well as his fines and fees. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In February 2012, Outlaw pleaded guilty to second degree commercial burglary (§§ 459, 460, subd. (b)) committed on September 26, 2011. He also admitted having suffered a prior serious or violent conviction within the meaning of the Three Strikes law (§ 667, subds. (d) & (e)) and two prior convictions within the meaning of section 667.5, subdivision (b). The trial court granted the prosecution's motion to strike (§ 1385) the Three Strikes law conviction and one of the section 667.5 priors and imposed a prison sentence of three years. The court ordered him to pay a \$240 restitution fine (§ 1202.4, subd. (b)).

In December 2014, Outlaw filed a petition seeking to designate his conviction as a misdemeanor (§ 1170.18, subd. (f)), or to recall his felony conviction, reduce the conviction to a misdemeanor, and resentence him. (§ 1170.18, subd. (a).) At a hearing on December 5, 2014, the parties agreed the loss occasioned by Outlaw's burglary was less than \$950. (See § 459.5 [crime of shoplifting defined as entering a commercial establishment with intent to commit larceny during regular business hours where the value of the stolen property does not exceed nine hundred fifty dollars (\$950); applies notwithstanding section 459 and punished as a misdemeanor].) The trial court noted Outlaw was on postrelease community supervision (PRCS) and found he was currently serving his sentence. It granted the recall petition, vacated the sentence and resentenced Outlaw to 365 days in jail with custody and conduct credits of 365 days. The

court imposed a one year parole period over Outlaw's objection. The court cited Outlaw's prior record and poor performance on PRCS and found he was a danger to public safety. Counsel noted his client had served 1,095 days in prison, had been discharged from prison to PRCS on April 9, 2013, and had served 555 days in jail for violations of PRCS.

II

DISCUSSION

In his opening brief filed in June 2015, Outlaw contends the trial court erred by imposing a one year parole period. He argues a person on PRCS (§ 3450 et seq.) is not currently serving his sentence (§ 1170.18, subd. (a)) and is therefore not subject to parole (§ 1170.18, subd. (d); cf. § 1170.18, subd. (f)). Alternatively, he asserts the trial court abused its discretion by imposing parole because he had served 1,095 days in state prison and 555 days in jail for violating PRCS, which was "far more than the 365 day sentence and one year parole time," and the court erred in failing to apply excess custody credits to reduce his parole term.

The trial court did not err in recalling the sentence under section 1170.18, subdivision (a), and imposing a one-year parole period without using any excess custody credits to reduce Outlaw's parole period. (*People v. Morales* (June 16, 2016, S228030) ___ Cal.4th ___ (*Morales*) [credit for time served does not reduce the parole period required by section 1170.18, subd. (d)].) Although the Supreme Court's decision in *Morales* did not expressly decide whether a person who has completed a prison term and placed on PRCS is still "serving a sentence" (§ 1170.18, subs. (a), (d)), this court concluded in *People v. Morales* 238 Cal.App.4th 42 that PRCS is part of the sentence, and this holding is implicit in the Supreme Court's opinion in *Morales*. We continue to adopt this view. In any event, Outlaw's one-year parole should have ended in December 2015. As he is presumably no longer on parole, any discussion of the issue is superfluous. (See *Eye Dog Foundation v. State Board* (1967) 67 Cal.2d 536, 541 [duty

of appellate court is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions or to declare principles or rules of law which cannot affect the matter in issue].)

Outlaw also states “the matter should be remanded so that . . . existing fines and fees can be appropriately adjusted in light of his excess days of custody and previously served post-release period.” Outlaw does not identify any existing fines and fees. The court at resentencing vacated the original sentence imposed in February 2012 and the record does not reflect the court imposed any fines and fees in December 2014.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.