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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.

DANIELE KRISTINE CORNELISON,

Defendant and Appellant.

G051436

(Super. Ct. No. 13NF0526)

O P I N I O N

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

Laurel M. Nelson, 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, Charles C. Ragland and Marvin E. Mizell, Deputy Attorneys General, for Plaintiff and Respondent.

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Daniele Kristine Cornelison appeals from a Proposition 47 resentencing order. She contends the trial court erred in sentencing her to one year of parole under Penal Code section 1170.18, subdivision (d), (all further undesignated statutory references are to the Penal Code unless noted) because she already had completed her felony prison sentence. She also argues the trial court erred in failing to apply her excess custody credits to reduce her parole term, as well as her fines and fees. For the reasons expressed below, we modify the judgment to deem certain fines and assessments offset by excess custody credits, and otherwise affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

A felony complaint filed in February 2013, as amended in April 2013, charged Cornelison with felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), misdemeanor possession of drug paraphernalia (Health & Saf. Code, § 11364.1, subd. (a)), misdemeanor theft with prior convictions (§§ 484, subd. (a), 488, 666, subd. (a)), all committed on February 9, 2013. It also alleged she previously had suffered a serious or violent felony conviction for robbery (§ 211, 212.5) within the meaning of the Three Strikes law (§§ 667, subs. (d), (e)(1); 1170.12, subd. (b), (c)(1)) in 2008, and served a term in prison (§ 667.5, subd. (b)).

In April 2013, Cornelison pleaded guilty to the charged offenses, and admitted the sentencing enhancements, on the understanding the court would impose, and suspend execution of a three-year prison sentence, and grant her probation on various terms and conditions. She agreed to pay a state restitution fine, and agreed to waive her right to appeal from any legally authorized sentence imposed by the court consistent with the plea agreement. The court imposed the agreed-upon sentence after it struck the sentencing enhancements. The court imposed a \$280 restitution fine (§ 1202.4, subd. (b)), imposed and stayed a \$280 probation revocation fine, and imposed various fees.

Cornelison was arrested on a new case (Super. Ct. Orange County, 2013, No. 13CF3333) in October 2013. In June 2014, Cornelison waived her rights and admitted violating probation. The court terminated probation and lifted the stay on the three-year sentence. The court also imposed the \$280 probation revocation fine.

In January 2015, Cornelison filed an application to have her felony conviction designated as a misdemeanor (§ 1170.18). She alleged either she had completed her sentence (§ 1170.18, subd. (f)) or, if she was currently serving her sentence, she sought recall of her sentence and resentencing (§ 1170.18, subd. (a)).

At the hearing in January 2015, the trial court noted Cornelison was on postrelease community supervision (PRCS) and currently serving her sentence. The court recalled her sentence (§ 1170.18, subd. (a)) and resentenced her to a misdemeanor (Health & Saf. Code, § 11377), imposing a sentence of 365 days (later reduced to 364 days; see § 18.5) and awarding her credit for time served. The court reimposed the previous fines and fees. The court also placed Cornelison on one year of parole over Cornelison's objection. The court cited Cornelison's October 2013 conviction, as well as her 2008 robbery conviction as reasons to impose a parole period.

In February 2015, Cornelison appealed from the resentencing order. In July 2015, we granted her motion to file a supplemental brief addressing a recent decision from this court, and also granted her motion for calendar preference. In August 2015, Cornelison's appellate counsel advised us the appeal appeared to be moot because the trial court had issued an order on August 12, 2015, modifying Cornelison's sentence to discharge her from parole, and deeming her remaining fines and fees paid in full because of excess custody credits. We augmented the record to include counsel's letters and attached documents, and stated we would decide whether the appeal was moot in conjunction with preparation of an opinion.

## II

### DISCUSSION

In her opening brief filed in June 2015, Cornelison contends the trial court erred by imposing a one year parole period. She argues a person on PRCS (§ 3450 et seq.) is not currently serving a sentence (§ 1170.18, subd. (a)) and is therefore not subject to parole (§ 1170.18, subd. (d); cf. § 1170.18, subd. (f)). Alternatively, she asserts the trial court abused its discretion by imposing parole because she had served over three years in custody for the offense, which exceeded the 365-day sentence and a one year parole period. In her supplemental brief filed July 31, 2015, Cornelison relies on this court’s now superseded opinion (*People v. Morales*, (2015) 238 Cal.App.4th 42, review granted August 26, 2015, S228030) to argue her excess custody credits should be credited against her 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 applying any excess custody credits to reduce Cornelison’s parole period. (*People v. Morales* (2016) 63 Cal.4th 399 (*Morales*) [credit for time served does not reduce the parole period required by § 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 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 the Supreme Court’s opinion in *Morales*. We continue to adhere to this view. Also, as noted, the trial court discharged Cornelison from parole on August 12, 2015, so any discussion of this issue is superfluous. (See *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (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].)<sup>1</sup>

Cornelison also contends she was entitled under governing law to apply excess custody credits from her former felony sentence to reduce various fines and fees. In January 2015, the court stated it was “reimpos[ing] any previously stayed fines and fees.” At the original sentencing, the court imposed a \$280 restitution fine (§ 1202.4, subd. (b)), a \$40 court operations fee (§ 1465.8), a \$30 criminal conviction assessment fee (Gov. Code, § 70373, subd. (a)(1)), and a \$50 laboratory analysis fee (Health & Saf. Code, § 11372.5). The court also imposed and stayed a \$280 probation revocation fine (§ 1202.44). The court lifted the stay on the probation revocation fine in June 2014 when it terminated probation. In August 2015 the trial court deemed these fines and fees paid in full because of excess custody credits, although, as noted (fn. 1, *ante*), the Attorney General contends the court lacked jurisdiction to do so because the case was on appeal.

Cornelison asserts without contradiction by the Attorney General she served 609 days of actual custody for the offense before the trial court reduced it to a misdemeanor. Her custody thus far exceeded the 365-day sentence imposed in January 2015. The version of section 2900.5, subdivision (a), in effect when Cornelison committed the crime of possessing methamphetamine in February 2013 provided “all 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.

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<sup>1</sup> The Attorney General argues the trial court did not have jurisdiction to modify the sentence while the case was on appeal in this court. (*People v. Scarbrough* (2015) 240 Cal.App.4th 916.) Assuming the Attorney General is correct, Cornelison’s one-year parole term would have ended in January 2016, and there no possibility the trial court will reinstate Cornelison to parole at this late date.

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.” Under section 2900.5, a defendant convicted of a crime committed before July 2013 and resentenced under Proposition 47 is entitled to have her excess custody credits applied to reduce a section 1202.4, subdivision (b), restitution fine. (*People v. Morris* (2015) 242 Cal.App.4th 94, 100 [under § 2900.5, subd. (a), a defendant’s excess custody credits may be applied to reduce the amount of certain court-ordered fines]; see Couzens & Bigelow, Proposition 47 “The Safe Neighborhoods and Schools Act” (May 2016), <<http://www.courts.ca.gov/documents/Prop-47-Information.pdf>> p. 86 [excess credits may be applied to reduce certain fees and fines].)

The Attorney General’s argument section 2900.5 does not apply to restitution fines relies on a later version of the statute that cannot be applied retroactively. (*Morris, supra*, 242 Cal.App.4th at p. 102 [defendant is entitled to apply his excess custody credits to his restitution fine under § 2900.5, subd. (a) in effect at the time of his offense in January 2013]; *People v. Souza* (2012) 54 Cal.4th 90, 143 [well established imposition of restitution fines constitutes punishment and therefore is subject to the proscriptions of the ex post facto clause and other constitutional provisions].) The probation revocation fine (§ 1202.44) is similar to a restitution fine and is likewise subject to reduction. (*People v. Callejas* (2000) 85 Cal.App.4th 667, 670 [parole revocation fine punitive and imposition pursuant to statute enacted after commission of crime violated ex post facto prohibition].)

The Attorney General agrees section 2900.5 applies to the \$50 laboratory analysis fee because payments ordered under Health and Safety Code section 11372.5 are

considered punitive. (*People v. Sharret* (2011) 191 Cal.App.4th 859, 869.) Section 2900.5 credits do not apply to nonpunitive assessments and fees, including the \$40 court operations fee (§ 1465.8) and \$30 criminal conviction assessment fee (Gov. Code, § 70373, subd. (a)(1); *People v. Robinson* (2012) 209 Cal.App.4th 401, 406-407.)

Because Cornelison's excess custody credits exceed the sum of her punitive fines and fees, we will modify of the judgment.

### III

#### DISPOSITION

The judgment is ordered modified (§ 1260) by deeming the \$280 restitution fine (§ 1202.4, subd. (b)), the \$280 probation revocation fine (§ 1202.44), and the \$50 laboratory analysis fee (Health & Saf. Code, § 11372.5) to have been satisfied in full by defendant's excess days spent in custody pursuant to former section 2900.5, subdivision (a). As so modified, the judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

BEDSWORTH, J.