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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.

CHRISTOPHER CASTILLO,

Defendant and Appellant.

G051922

(Super. Ct. No. 08SF0743)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Richard M. King, Judge. Reversed with directions.

Matthew Missakian, 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.

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Christopher Castillo pleaded guilty to robbery. He contends the trial court erred in denying his postjudgment motion to award him 299 days of additional custody credit. The Attorney General concedes the error. For the reasons expressed below, we reverse.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

In November 2008, Christopher Castillo pleaded guilty to second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c); all statutory citations are to the Penal Code) in Orange County case number 08SF0743. The trial court suspended imposition of sentence and placed him on probation. In July 2009, Castillo admitted violating probation. The court reinstated probation and ordered him to serve an additional period in jail.

On March 30, 2010, Castillo was arrested for second degree robbery and receipt of stolen property (§ 496, subd. (a)) in Orange County case number 10HF0591. On April 1, 2010, the court revoked probation in case number 08SF0743.

In August 2010, Castillo pleaded guilty in case number 10HF0591. The court suspended execution of sentence and placed Castillo on probation, ordering him to serve time in county jail. On the same day, Castillo admitted violating probation in case number 08SF0743, and the court reinstated probation with no additional jail time.

In December 2012, Castillo was arrested again for probation violations and the court revoked probation in both cases. In June 2013, the court granted Castillo's motion to withdraw his guilty plea in case number 10HF0591, and the case proceeded to trial. In September 2013, a jury found Castillo guilty of receiving stolen property. In October 2013, the court imposed a prison sentence of four years in case number 10HF0591. The court terminated probation in case number 08SF0743, and imposed a concurrent term of three years, with credit for 241 days (210 days actual and 31 days conduct credits).

In January 2015, the court reduced Castillo's conviction in case number 10HF0591 to a misdemeanor pursuant to section 1170.18 (Proposition 47). The court resentenced Castillo to 364 days in county jail.

In April 2015, Castillo filed a motion to correct his credits and modify his sentence in case number 08SF0743. He argued he had 299 days of excess credits after the court reduced the offense in case number 10HF0591 to a misdemeanor, and this should have been credited against case number 08SF0743. The court denied the motion on April 22, 2015.

## II

### DISCUSSION

The Attorney General concedes Castillo is entitled to an additional 299 days of custody and conduct credit in case number 08SF0743 based on excess time served in case number 10HF0591. We accept the concession.

In November 2008, Castillo received probation and 270 days in county jail on case number 08SF0743. He served 180 actual days. In July 2009, he received 45 days for a probation violation in case number 08SF0743, and served 30 actual days. The parties agreed he served a total of 210 actual days attributable to case number 08SF0743.

In August 2010, the court awarded Castillo 133 days against his sentence in case number 10HF0591. He was taken back into custody in December 2012. When he was sentenced in October 2013, he had been in custody for 309 days. The court credited him with 442 days of actual service (133 plus 309) in case number 10HF0591. He was also sentenced in case number 08SF0743, but the court awarded only the 210 actual days previously credited after his July 2009 probation violation.

In January 2015, the trial court reduced the conviction in case number 10HF0591 to a misdemeanor and the court resentenced him to serve 364 days with credit for time served of 182 actual days. This left Castillo having served an excess of 260 days in custody (442 days less 182 days). Adding the 210 actual days Castillo served in

presentence custody in case number 08SF0743 results in a total credit of 470 actual days. Castillo is also entitled to conduct credits of 15 percent (*In re Pope* (2010) 50 Cal.4th 777, 781-782), resulting in an additional 70 days, for a total award of 540 days. He received only 241 days of credit in case number 08SF0743, and is therefore entitled to an additional 299 days of credit. (See § 2900.5; *In re Marquez* (2003) 30 Cal.4th 14, 19.)

#### DISPOSITION

The order denying Castillo's motion to correct credits is reversed. The trial court is directed to award Castillo an additional 299 days of credit in case number 08SF0743. The trial court is further directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

ARONSON, J.

WE CONCUR:

BEDSWORTH, P. J.

MOORE, J.