

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MYRESHEIA ARRENETTI WHITE,

Defendant and Appellant.

H037724

(Monterey County

Super. Ct. No. SS101876)

On September 20, 2011, pursuant to a negotiated disposition, defendant Myresheia Arrenetti White pleaded no contest to one count of commercial burglary (Pen. Code, § 459)¹ and admitted one of two “strike” prior convictions (§ 1170.12, subd. (c)(1)). On December 8, 2011, in accordance with the plea agreement, the trial court granted White’s *Romero*² motion and sentenced her to the middle term of two years, with custody and conduct credits totaling 631 days. In April 2012, White’s appellate counsel brought a motion in the trial court to correct her presentence credits. That motion was granted and White was awarded an additional 148 days of credits, bringing her total credits to 779 days.

We appointed counsel to represent White in this court. Appointed counsel filed an opening brief which states the case and the facts, but raises no specific issues. Along

¹ Further unspecified statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

with that brief, appointed counsel has submitted a declaration stating that he has made multiple unsuccessful attempts to establish contact with White and has thus been unable to advise White of her right to file a supplemental brief in this court within 30 days of the date this brief is filed.

I. DISCUSSION

Pursuant to the probation report, on August 5, 2010, White entered a Target store and attempted to steal electronic and clothing items by stuffing them into her pants. Before placing the electronic items in her clothing, she removed them from their packaging by cutting it open. When stopped by store security, she admitted attempting to steal the merchandise, claiming she needed money to visit a terminally-ill relative who lived out of state. White was wearing multiple layers of clothing, and had secured the bottoms of her pant legs with rubber bands to prevent the merchandise from falling out.

Responding officers determined that White was on parole and she was placed on parole hold. While being transported to the Monterey County Jail, White claimed to be suffering from an asthma attack and was diverted to the Natividad Medical Center. Doctors examined her and determined she had no medical condition which would prohibit her from being booked into jail.

On the way to the jail, White asked the transporting officer to roll down the rear windows so she could breathe more easily. As he arrived at the jail, the officer noticed that White had her legs half-way out one of the rear windows. He stopped the vehicle and, as he opened the door, White maneuvered to the other side of the car and attempted to get out through the other open window. With the assistance of other officers, White was restrained and taken into the jail.

White was charged by amended information with one count of commercial burglary (§ 459), and one count of petty theft with three priors (§§ 666, 484, subd. (a)). The information further alleged a prison prior (§ 667.5, subd. (b)), and two “strike” priors (§ 1170.12, subd. (c)(1)).

On September 21, 2010, White waived formal arraignment, pleaded not guilty, and denied the prior convictions and allegations. After White was found mentally incompetent to stand trial, criminal proceedings were suspended. (§ 1367 et seq.) Criminal proceedings were reinstated on August 30, 2011, following issuance of a certification of mental competence, based on an attached medical report dated August 10, 2011.

On September 20, 2011, White withdrew her previous plea and, pursuant to a negotiated disposition capping her sentence to 32 months in state prison, entered a plea of no contest to commercial burglary (§ 459) and admitted the truth of one of the “strike” priors. (§ 1170.12, subd. (c)(1).) As part of the negotiated plea, the other strike allegation was dismissed and White was permitted to file a *Romero* motion to challenge the admitted strike prior.

On December 8, 2011, after first granting White’s *Romero* motion, the court imposed the middle term of two years for the commercial burglary. The trial court also imposed a restitution fine of \$200 pursuant to section 1202.4, subdivision (b); a \$200 parole revocation fine under section 1202.45 (stayed unless parole revoked); a court security fee of \$40 (§ 1465.8); a \$30 criminal conviction assessment fee (Gov. Code, § 70373); and a \$10 crime prevention fee (§ 1202.5). White was ordered to pay actual restitution of \$116.95. She was awarded a total of 631 days credit, comprised of 491 days actual credit, plus 140 conduct credits. The remaining count and the prison prior were dismissed.

White’s notice of appeal was timely filed on December 9, 2011.

On April 20, 2012, appellate counsel filed, in the trial court, a motion to correct White’s presentence credits. In this motion, White argued she was entitled to additional conduct credits under *People v. Bryant* (2009) 174 Cal.App.4th 175 for the 13 days which elapsed between her being found competent to stand trial and her being physically transported to the county jail from the state hospital. White further argued that she was

entitled to additional conduct credits under the version of section 4019 in effect at the time of her offense. That version of the statute provided for the accrual of two days of conduct credit for every two days of presentence custody for any person who is not required to register as a sex offender and is not being committed to prison for, or has not suffered a prior conviction of, a serious felony as defined in section 1192.7 or a violent felony as defined in section 667.5, subdivision (c). (§ 4019, subd. (f), as amended by Stats. 2009-2010, ch. 28, § 50.)³ Because White’s two prior strikes had been dismissed, one pursuant to her plea agreement and the other when the trial court granted her *Romero* motion, she was entitled to additional conduct credits under the statute.

On May 3, 2012, the trial court granted the motion and indicated that it had granted the “*Romero* motion as to the strike for all purposes.”⁴ White’s sentence was modified, according to the signed minute order, to award “[c]redit for time served of 576 days plus 203 days good and work time, for a total of 779 days. Conduct/work credits calculated at 33%.”⁵ The abstract of judgment was modified to reflect total credit of 779 days, consisting of 576 days of “actual local time” and 203 days of “local conduct credits.”

³ Section 4019 was amended effective September 28, 2010, to reinstate the conduct credit provisions that applied before the January 25, 2010 amendment. (§ 4019, as amended by Stats. 2010, ch. 426, § 2.) This statutory change applies only to crimes committed after September 28, 2010.

⁴ The California Supreme Court recently held that trial courts do not have the discretion to dismiss or strike prior serious felony convictions under section 1385 in order to award the defendant additional presentence credits under section 4019. (*People v. Lara* (2012) 54 Cal.4th 896, review granted May 18, 2011, S192784.)

⁵ The reference to credits being calculated at 33 percent appears to be a clerical error, especially since the trial court apparently agreed with White that she was entitled to accrue conduct credits at a rate of 50 percent under former section 4019. At the hearing on White’s motion, there was no mention of the rate at which conduct credits were calculated.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436 and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the whole record and have concluded there is no arguable issue on appeal.

II. DISPOSITION

The judgment is affirmed.

Premo, Acting P.J.

WE CONCUR:

Mihara, J.

Duffy, J.*

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.