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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS TARELO GONZALEZ,

Defendant and Appellant.

B236716

(Los Angeles County
Super. Ct. No. NA080045)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Tomson T. Ong, Judge. Affirmed as modified, and remanded.

Edward H. Schulman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, James William Bilderback II and Linda C. Johnson, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Jesus Tarelo Gonzalez of kidnapping to commit rape (Pen. Code, § 209, count 1); forcible sexual penetration by a foreign object (*id.*, § 289, subd. (a)(1), count 2); and attempted forcible rape (*id.*, §§ 664, 261, subd. (a)(2)). The trial court sentenced defendant to life on count 1, and stayed the sentence pursuant to Penal Code section 654. The court imposed 25 years to life on count 2, pursuant to Penal Code section 667.61. In addition, the court imposed an eight-year term of imprisonment on count 2. On count 3, the trial court imposed one-third the midterm, or two years, consecutive to count 2. Gonzalez appealed his convictions and sentence, and in an unpublished opinion we concluded that the trial court erred in sentencing defendant to 25 years to life plus eight years on count 2, in addition to two years on count 3. We remanded the case to the trial court for resentencing, but otherwise affirmed defendant's convictions. (*People v. Gonzales* (Feb. 9, 2011, B218052) [nonpub. opn.])

On August 22, 2011, the trial court resentenced defendant to an indeterminate term of 25 years to life on count 2, and the upper term of four years on count 3, to run concurrently. He was awarded 235 days of custody credits, consisting of 205 actual and 30 conduct credits. The abstract of judgment listed the conviction for count 3 as "attempted pandering." Counsel submitted a motion to the trial court requesting that the custody credits be recalculated for all time served before resentencing, and that the abstract of judgment be corrected to reflect defendant's conviction on count 3 for attempted forcible rape rather than attempted pandering. The trial court denied the motion as to the custody credits, concluding "there is no need to re-compute the custody credits. The custody credits are computed on the date of the original sentence, not the date of any amendment to the abstract of judgment." The court made no ruling regarding the correction to count 3. An amended abstract of judgment was issued that reflected the same number of custody credits as well as a conviction for attempted pandering on count 3 (other matters not at issue in this appeal were corrected).

In this appeal, defendant seeks to correct these errors. Respondent concedes, and we agree, that defendant is entitled to have his custody credits recalculated according to

the date of resentencing of August 22, 2011, and to have the abstract of judgment corrected to properly reflect his conviction for attempted forcible rape on count 3. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [“a court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts”]; *People v. Buckhalter* (2001) 26 Cal.4th 20, 29 [“[W]hen a prison term already in progress is modified as the result of an appellate sentence remand, the sentencing court must recalculate and credit against the modified sentence all *actual time* the defendant has already served, whether in jail or prison, and whether before or since he was originally committed and delivered to prison custody”].)

DISPOSITION

The case is remanded. The trial court is directed to recalculate defendant’s custody credits through the date of resentencing, and to issue a corrected abstract of judgment reflecting defendant’s conviction for attempted forcible rape on count 3. The trial court is directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

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GRIMES, J.

WE CONCUR:

FLIER, Acting P. J.

SORTINO, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.