

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DWAYNE TAYLOR,

Defendant and Appellant.

B280778

(Los Angeles County  
Super. Ct. No. TA139538)

APPEAL from a judgment of the Superior Court of Los Angeles County. Allen Joseph Webster, Jr., Judge. Affirmed as modified and remanded with directions.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

---

Dwayne Taylor (appellant) pleaded no contest to human trafficking of a minor for a commercial sex act (Pen. Code, § 236.1, subd. (c)(1))<sup>1</sup> and dissuading a witness from testifying (§ 136.1, subd. (a)(1)).<sup>2</sup> He admitted that he had suffered a prior serious or violent felony conviction within the meaning of the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). He was sentenced to 16 years in state prison as follows: on the human trafficking count, the midterm of eight years, doubled pursuant to the Three Strikes law; on the dissuading a witness count, a concurrent midterm of two years. He received a total of 325 days of custody credit, including 291 actual days and 34 days of conduct credit.

On appeal, appellant contends the trial court erred when it applied section 2933.1 to limit his good time/worktime presentence conduct credits to 15 percent of his actual days of confinement. According to appellant, he should have received 572 days of credit instead of 325 days. In addition, appellant contends the trial court erred when it indicated that he would

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> In connection with the plea agreement, the trial court dismissed charges against appellant for pimping a minor 16 years of age or older (§ 266h, subd. (b)(1)), possession of a firearm by a felon (§ 29800, subd. (a)(1)), possession of ammunition (§ 30305, subd. (a)(1)), possession of body armor (§ 31360, subd. (a)), and misdemeanor disobeying a court order (§ 166, subd. (a)(4)).

have to serve at least 85 percent of his prison sentence pursuant to section 2933.1. Appellant argues that as a second strike offender, section 667, subdivision (c)(5) requires that he serve only 80 percent.

We agree with appellant. Accordingly, we modify the judgment to reflect that appellant shall receive 572 days of custody credit. On remand, inter alia, we direct the trial court to clarify that appellant has to serve 80 percent of his prison sentence under section 667, subdivision (c)(5).

### **FACTS**

Appellant was arrested on March 10, 2016, and sentenced on December 20, 2106. Prior to appellant's plea, the parties and the trial court discussed the plea deal, which defense counsel said would end up being 16 years with 80 percent of the sentence having to be served. The trial court said 85 percent had to be served. But then, later, the defendant said, "I'll take it. 16 with 80. You said 16 with 80 percent?" The trial court said, "Yeah. Yeah."

Appellant entered a plea.

On December 20, 2016, the trial court sentenced appellant to 16 years in prison. It stated that appellant would be "given credit for 291 days actually served in county jail; 15 percent credits, that's an additional 34 days. So a grand total of 325 days . . . good time/work time credits. [¶] The law permits the award

of conduct/work time credits of one-third or one-half the sentence; that is imposed by the [trial court], with exceptions. The calculated credits this morning [were] determined by the [trial court]. In the future, they will be determined by the Department of Corrections. [¶] And this is a special case pursuant to [section] 2933.1[, subdivision (c)]. That is how you get the 15 percent credit.” At a later point in the hearing, the trial court explained to appellant that he would have to serve 85 percent of his 16 year sentence. Appellant objected, saying he was told he would only have to serve 80 percent. The trial court said appellant had been informed he would have to serve 85 percent, and he had been sentenced pursuant to the law. It informed appellant he could raise the issue on appeal.

## **DISCUSSION**

### **I. Presentence Custody Credits.**

A defendant is entitled to a credit against his or her prison sentence for actual days spent in custody from the date of arrest to the date of sentencing. (§ 2900.5; *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48.) In addition, under section 4019, a defendant is eligible for conduct credits pertaining to good behavior and performing assigned labor tasks (good time/worktime credits). (§ 4019, subds. (b) & (c).) However, good time/worktime credits are limited to 15 percent of the actual period of confinement if the current offense was a violent felony

within the meaning of section 667.5, subdivision (c). (§ 2933.1, subd. (c).)

Human trafficking of a minor for a commercial sex act (§ 236.1, subd. (c)(1)) is not a violent felony within the meaning of section 667.5, subdivision (c). Thus, the trial court erred when it applied section 2933.1 to limit appellant's good time/worktime credits to 15 percent of the actual period of confinement.

Appellant was arrested on March 10, 2016, and sentenced on December 20, 2016. He was entitled to credit for 286 days of actual presentence custody credit. Moreover, for good time/worktime credits, he was entitled to another 286 days. (§ 4019, subd. (f) ["if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody"].) As appellant contends, he was entitled to 572 days of credit.

The People agree that the trial court erred, and also agree that appellant was entitled to 572 days of credit. Nonetheless, the People argue that this issue is not cognizable on appeal because appellant was required by section 1237.1 to present the issue to the trial court first.

In part, section 1237.1 provides, “No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court, which may be made informally in writing.”

This statute is inapplicable. It applies to math errors, not legal error as to how credits must be calculated. (*People v. Delgado* (2012) 210 Cal.App.4th 761, 765; *People v. Santa Ana* (2016) 247 Cal.App.4th 1123, 1127, fn. 3.) As a result, the trial court’s legal error in applying section 2933.1, subdivision (c) is cognizable on appeal. The remedy is for us to modify the judgment to reflect the correct amount of presentence credits, and then to direct the trial court to amend the abstract of judgment and forward a copy of the amended abstract to the Department of Corrections. (*People v. Duran* (1998) 67 Cal.App.4th 267, 270.)

## **II. In-Prison Custody Credits.**

A second strike offender such as appellant cannot obtain in-prison credits in excess of “one-fifth of the total term of imprisonment imposed[.]” (§ 667, subd. (c)(5).) In other words, appellant must serve at least 80 percent of his or her prison sentence, not 85 percent pursuant to section 2933.1 as indicated by the trial court during the sentencing hearing. The People concede the point. Nonetheless, the People contend there is nothing for us to correct because the abstract of judgment does not limit appellant’s in-prison credits, nor does it state that appellant is required to serve 85 percent of his sentence. According to the People, appellant’s remedy is to file a petition for writ of habeas corpus in the event that the Department of Corrections miscalculates his in-prison credits. (*People v. Brown* (2012) 54 Cal.4th 314, 322, fn. 11; *In re Pacheco* (2007) 155 Cal.App.4th 1439, 1441–1442.) Appellant, on the other hand, suggests that because the case has to be remanded, we should take the opportunity to clarify the record to avoid any confusion in the future. We agree with appellant. As a matter of practicality and efficiency, the record should be clarified.

### **DISPOSITION**

The judgment is modified to reflect an award of 572 days of presentence custody credit. As modified, the judgment is affirmed. On remand, the trial court is directed to: (1) clarify

that appellant must serve 80 percent of his sentence, i.e., his imprisonment credits are limited to one-fifth of the total term of imprisonment pursuant to section 667, subdivision (c)(5); and (2) prepare an amended abstract of judgment which states the correct award of presentence custody credit, and forward the amended abstract of judgment to the Department of Corrections.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.\*  
GOODMAN

---

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