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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

SIRLASIE RAYSHON CURRY,

Defendant and Appellant.

B275967

(Los Angeles County
Super. Ct. No. YA060289)

APPEAL from an order of the Superior Court of Los Angeles County, Steven R. Van Sicklen, Judge. Dismissed with directions.

Jeffrey J. Gale, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, and David A. Wildman, Deputy Attorney General, for Plaintiff and Respondent.

I. INTRODUCTION

On May 12, 2006, a jury convicted defendant, Sirlasie Rayshon Curry, of two counts of peace officer assault with a semiautomatic weapon and one count of firearm possession by a felon. (Pen. Code,¹ §§ 245, subd. (d)(2); former §§ 12021, subd. (a)(1).) The jury further found true allegations defendant personally used a firearm in committing the assaults. (§§ 2022.5, subds. (a), (d); 12022.53, subd. (b).) We modified and affirmed the judgment on direct appeal. (*People v. Curry* (Jan. 14, 2008, B194321) [nonpub. opn.].) As modified on appeal, defendant was sentenced to 24 years, 8 months in state prison.

At sentencing on October 4, 2006, the trial court awarded defendant credit for 666 days in presentence custody plus 100 days for good conduct. Ten years later, on April 25, 2016, defendant filed a motion in the trial court to correct his presentence credits. (§ 1237.1.) Defendant argued he was entitled to credit for 675 days in presentence custody plus 101 days of conduct credit. The trial court granted that motion and filed an amended abstract of judgment. On June 10, 2016, defendant filed a notice of appeal from the post-judgment order. For the reasons discussed below, we dismiss the appeal. But we direct the trial court to correct a clerical error in the amended abstract of judgment to accurately state the imposition of the court operations assessments.

¹ Further statutory references are to the Penal Code unless otherwise noted.

II. DISCUSSION

A. The Appeal Must be Dismissed

As noted above, on defendant's motion, the trial court modified defendant's presentence credits *as requested* to reflect 675 days of presentence custody credit and 101 days of conduct credit. The trial court's calculations were correct. Defendant was arrested on November 29, 2004 and sentenced 675 days later, on October 4, 2006. Defendant was entitled to credit for all days served in presentence custody including the day of his arrest and the day of his sentencing. (§ 2900.5, subd. (a); *People v. Cardenas* (2015) 239 Cal.App.4th 220, 235-236; *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48.) Because the jury found defendant used a firearm (§ 12022.5, subds. (a), (d)), his conduct credit was limited to 15 percent of his actual custody credit or 101 days. (§§ 667.5, subd. (c)(8); 2933.1, subd. (a); *People v. Duran* (1998) 67 Cal.App.4th 267, 270; *People v. Ramos* (1996) 50 Cal.App.4th 810, 815-817.)

Defendant purports to appeal from an order entered at his request and in his favor, that is, as to which he is not legally aggrieved. The trial court's order was not adverse to defendant. The trial court granted exactly the relief defendant requested. And defendant does not take issue with the trial court's resolution of his credit award. Defendant cannot appeal from an order entered in his favor, as to which he is not legally aggrieved. (*Lewis v. U.S.* (1910) 216 U.S. 611, 612 [defendant discharged from further prosecution "is not legally aggrieved, and therefore cannot appeal"]; *People v. Sorrentino* (1956) 146 Cal.App.2d 149, 152 ["appellant cannot appeal from a decision in his favor, [the

dismissal of an indictment,] not being aggrieved nor prejudiced thereby”]; *United States v. Shelley* (2d Cir. 1954) 218 F.2d 157, 158 [“Having received the contested order of dismissal at his own request, (defendant) is a successful litigant without an appealable interest”]; *Rush v. State* (S.C. 2006) 628 S.E.2d 42, 43 [“A party cannot appeal (a post-conviction relief) order issued with the consent of the party”]; 24 C.J.S. Criminal Procedure and Rights of Accused, § 2545.) The appeal must be dismissed.

B. The Court Operations Assessment and the Clerk’s Repeated Failure to Prepare a Correct Abstract of Judgment

As noted above, after granting defendant’s motion, the clerk prepared an amended abstract of judgment. The amended abstract of judgment reflects a \$20 court operations assessment. However, in our opinion on direct appeal, we held, “[D]efendant was subject to the imposition of a \$20 court [operations assessment] pursuant to section 1465.8, subdivision (a)(1) for each of the three counts of which he was convicted.” (*People v. Curry, supra*, typed opn. at p. 8.) We directed the trial court, upon remittitur issuance, to prepare a corrected abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation. (*People v. Curry, supra*, typed opn. at p. 9.) When an abstract of judgment does not reflect the sentence imposed, this court has the inherent power to correct it. (*People v. Jones* (2012) 54 Cal.4th 1, 89; *People v. Mitchell* (2001) 26 Cal.4th 181, 185, 188.) A jurisdictional error may be corrected at any time. (*People v. Scarbrough* (2015) 240 Cal.App.4th 916, 923; *People v. Cardenas* (2015) 239 Cal.App.4th 220, 235-236.) The abstract of judgment must be amended to reflect \$60 in court

operations assessments. The trial court is to actively and personally ensure the amended abstract of judgment is correct in this and all other respects. (*People v. Acosta* (2002) 29 Cal.4th 105, 109, fn. 2; *People v. Butcher* (2016) 247 Cal.App.4th 310, 324-325; *People v. Chan* (2005) 128 Cal.App.4th 408, 425-426.)

III. DISPOSITION

The appeal is dismissed. Upon remittitur issuance, the clerk of the superior court is to prepare an amended abstract of judgment that reflects \$60 in court operations assessments and deliver a copy to the Department of Corrections and Rehabilitation. The trial court is to actively and personally ensure the amended abstract of judgment is correct *in all respects*.

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TURNER, P.J.

We concur:

KRIEGLER, J.

KIN, J.*

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