

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD ROY PATTEN,

Defendant and Appellant.

B238363

(Los Angeles County
Super. Ct. No. MA031941)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Hayden Zacky, Judge. Reversed and remanded with directions.

Donald R. Tickle, 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, Assistant Attorney General, Linda C. Johnson and Theresa A. Patterson, Deputy Attorneys General, for Plaintiff and Respondent.

Edward Roy Patten appeals from the trial court's calculation of custody credits following the court's revocation of his probation. We reverse and remand with directions.

FACTS AND PROCEEDINGS

In June 2005, the People charged appellant Edward Roy Patten with assault with a deadly weapon, and alleged that he inflicted great bodily injury on his victim. Appellant pleaded no contest, and admitted one prior conviction under the Three Strikes law. The trial court ordered that appellant serve 12 years in state prison, but suspended the sentence and placed appellant on five years' formal probation. The court awarded appellant 266 days of presentence custody credit, consisting of 178 days actual custody and 88 days local conduct credit.

In 2009, police arrested appellant for committing battery resulting in great bodily injury. In August 2009, the court found appellant violated his probation and remanded appellant to state prison to serve his 12 year sentence. In remanding appellant, the court awarded appellant 110 additional days of presentence custody credit, consisting of 74 additional days of actual custody and 36 additional days of local conduct credit. In an unpublished decision, we reversed the court's order revoking appellant's probation. (*People v. Patten* (May 2, 2011, B219908) [nonpub. opn.].) We remanded appellant's case to the trial court with directions that the court give appellant a reasonable opportunity to present witnesses in his defense.

Upon remand, the trial court conducted a renewed probation violation hearing in December 2011. Again, the court found appellant had violated his probation and ordered appellant to serve his sentence. The court awarded appellant 778 days of custody credits. Appellant and the Attorney General agree the court miscalculated appellant's credits, and both ask that we remand this matter to the trial court for a correct calculation. For the benefit of the parties and trial court upon remand, we describe in the *Discussion* section of this opinion the court's errors.

DISCUSSION

1. *Remand to Recalculate Custody Credits*

At the conclusion of the December 2011 probation revocation hearing, the court told appellant, “I’m going to give you every single day of credit that you are entitled to.” Both sides assert, and we agree, that the court’s calculation of credits was flawed. When the court first placed appellant on probation in August 2005, it awarded appellant 266 days of presentence custody credit, consisting of 178 days actual custody and 88 days local conduct credit. In August 2009, when the court revoked appellant’s probation for the first time, it awarded appellant an additional 74 days of actual custody credits and 36 days of local conduct credits, raising appellant’s total custody credits to 376 days (178 actual + 88 local + 74 actual + 36 local). But the August 2009 abstract of judgment mischaracterized those 376 days. The abstract mistakenly allocated 340 days to actual custody and 36 days to local conduct. The correct allocation was 252 days actual custody (178 days from 2005 plus 74 days from 2009) and 124 days local conduct (88 days from 2005 plus 36 from 2009). We note the mischaracterization because the 340-day mistake figures in the court’s December 2011 award of custody credits from which appellant appeals.

During the December 2011 revocation hearing, the court began its calculation of appellant’s custody credits by noting that appellant received 266 days credit “originally at time of sentencing” in 2005. So far, so good. The court then incorrectly stated that appellant’s actual credits from the August 2009 hearing were 340 days; in fact, the correct amount was 252 actual custody days, consisting of 178 days actual custody in 2005 and 74 days actual custody in 2009. It appears likely that the court drew the 340-day figure from the erroneous August 2009 abstract of judgment. Relying on the incorrect 340-day amount, the court stated, “So I’m going to take that 340 and calculate the difference between that date and today’s date [December 5, 2011]. And that’s how we will calculate the actual time” Making that calculation, the court stated appellant’s “actual time will be another 106 days. So it’ll be 340 plus 106. His new

actual is 446.” Here, the court made a new mistake. The number of days from the first revocation hearing on August 21, 2009, up to and including the December 5, 2011, revocation hearing at issue here is 837; it appears instead that the court misunderstood the August 21 hearing as taking place not in 2009, but in 2011 for which 106 days do run from August 21 to December 5. Having miscalculated appellant’s credits for his periods in actual custody from 2005 to 2011, the court then awarded 15 percent local conduct credits, amounting to 66 additional days. Approaching its final calculation, the court stated appellant’s “total credits are 512” (446 actual + 66 local conduct). Reaching its final calculation, the court stated, “And then you add that [512 days] to the 266 he was given at the time of original sentencing [in 2005]. Total credits are 778” And here again the court seems to have made a mistake because it appears that the 266 days drawn from the August 2005 hearing were included in the 376 days awarded at the August 2009 hearing, and were thus double-counted in the court’s final calculation.

As if the foregoing were not enough to illustrate the challenge of accurately calculating custody credits, the Attorney General’s brief raises for the first time on appeal changes between 2005 and 2011 in the law governing limits on presentence conduct credits for violent felonies. (See Pen. Code, § 2933.1.) Appellant’s underlying 2005 offense for assault with a deadly weapon was a “violent felony” because appellant inflicted great bodily injury on his victim. (Pen. Code, §§ 12022.7, 667.5, subd. (c)(8).) The parties dispute the applicability of the 15 percent limitation. However, because limiting presentence custody credits involves determining facts such as, among other things, the length and place of appellant’s confinement, proper application of those limits rests, in the first instance, with the trial court.

Our foregoing exposition demonstrates an unclear record – a point on which both appellant and the Attorney General agree. Given the discrepancies in the record and the trial court’s mistakes in calculating appellant’s custody credits, both appellant and the Attorney General request that we remand the matter to the trial court for a correct calculation. Their request is well-taken.

2. *Court Security Fee*

The parties agree that during appellant's original sentencing in August 2005, Penal Code section 1465.8, subdivision (a)(1) mandated that the trial court impose a court security fee of \$20. Following the December 2011 hearing, the court's minute order imposed a \$20 court security fee, but the abstract of judgment stated the amount was \$30. Appellant contends the amount should be \$20 because that was the statutory amount at the time of appellant's sentencing in 2005. The Attorney General agrees.

DISPOSITION

The matter is remanded to the superior court with directions to recalculate appellant's custody credits and to reduce the court security fee under Penal Code section 1465.8, subdivision (a)(1) to \$20.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.