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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

WESLEY CALVIN LOGAN,

Defendant and Appellant.

B257101

(Los Angeles County  
Super. Ct. No. YA034217)

APPEAL from an order of the Superior Court of Los Angeles County,  
William C. Ryan, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant  
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Victoria B.  
Wilson and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

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Wesley Calvin Logan appeals from a post-judgment order placing him on postrelease community supervision (PRCS) pursuant to Penal Code section 3451, subdivision (a).<sup>1</sup> We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In 1997, Logan was convicted of second degree burglary (§ 459) with special findings that he had suffered two prior serious or violent felony convictions for residential burglary within the meaning of the three strikes law (§§ 667, subds. (b)-(d), 1170.12, subd. (a)). The trial court sentenced Logan as a third strike offender to an indeterminate state prison term of 25 years to life.

On September 13, 2013, Logan filed a petition for recall of sentence under the Three Strikes Reform Act of 2012 (Proposition 36). (§ 1170.126.)<sup>2</sup> On June 5, 2014, the trial court granted the petition and resentenced Logan to a state prison term of six years (double the three-year upper term) for second degree burglary. The court calculated Logan's total custody credits as 6,174 days (6,117 actual days and 57 days local conduct credits). Over Logan's objection, the court ordered him released subject to PRCS. Logan timely appealed.

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<sup>1</sup> Statutory references are to the Penal Code.

<sup>2</sup> In November 2012, California voters passed Proposition 36, which allows inmates serving an indeterminate life sentence imposed upon conviction of a felony or felonies not defined as serious or violent for purposes of the Three Strikes law to file a petition for recall of sentence and request resentencing. (See § 1170.126, subd. (b).) One of the eligibility conditions for resentencing is the inmate's current sentence was not imposed for any of the offenses listed in section 667, subdivision (e)(2)(C)(i)-(iii). (§ 1170.126, subd. (e)(2).) Logan's current sentence was imposed for second degree burglary, which is not one of the listed offenses. Accordingly, he was eligible for resentencing to double the base term. (§§ 667, subds. (e)(1), (e)(2)(A), (e)(2)(C), 1170.12, subds. (c)(1), (c)(2)(A), (c)(2)(C).)

## DISCUSSION

The Postrelease Community Supervision Act of 2011 (the Act) (§ 3450 et seq.) significantly changed the supervision of certain inmates upon release from state prison. These inmates would no longer be supervised by the state parole system. Instead, their postrelease supervision would be transferred to county agencies using enhanced supervision strategies, evidence-based practices, and community-based punishment. (§ 3450, subd. (b)(5).) The Legislature's stated purpose for PRCS was to reinvest California's criminal justice resources to improve public safety. (See § 3450, subd. (b)(4).) PRCS does not shorten the imposed prison term; it merely changes the agency that will supervise the inmate after release. Section 3451, subdivision (a), specifies that any term of PRCS shall be "for a period not exceeding three years."

Prior to the effective date of the Act, Logan would have been released from prison on parole, and any excess custody credits (credits in excess of his prison term) would have been deducted from his term of parole. (See § 2900.5, subd. (c); *In re Sosa* (1980) 102 Cal.App.3d 1002.) Logan argues because PRCS is analogous to parole, the trial court erred by not deducting his excess custody credits from PRCS, as the court would have done from the term of parole. According to Logan, had his excess custody credits been properly deducted, he would have been exempt from PRCS because the number of custody credits he had earned prior to resentencing "more than covered the three-year period."

The trial court did not err in ordering Logan to participate in PRCS. Participation in PRCS is mandatory for any inmate resentenced under section 1170.126 and released from custody. Custody credits cannot reduce the mandatory PRCS supervision period. (*People v. Espinoza* (2014) 226 Cal.App.4th 635, 639-640.) In *Espinoza*, a third-strike defendant's petition for recall of sentence under section 1170.126 was granted, and he was resentenced as a second strike offender to a determinate prison term. (*Espinoza*, at pp. 637-638.) Although the defendant's custody credits exceeded the term of his new sentence, he was ordered by the trial court to participate in PRCS. (*Id.* at p. 638.) The defendant appealed, arguing PRCS was the functional equivalent of parole, and his

excess custody credits should be subtracted from the term of PRCS as they are from the term of parole. (*Id.* at p. 639.) Our colleagues in Division Six of this court concluded PRCS and parole are two separate forms of supervision, noting “[u]nlike parole, a felon participating in PRCS cannot be returned to prison for violation of his or her postrelease supervision agreement (§ 3458.) Nor does the Department of Corrections and Rehabilitation have jurisdiction over persons subject to postrelease community supervision. (§ 3457.)” (*Ibid.*) The court explained that even if the defendant were entitled to custody credits, he was never paroled, having instead been resentenced under a new scheme requiring PRCS. (*Espinoza, supra*, 226 Cal.App.4th at pp. 639-640.) Logan acknowledges *Espinoza*, but contends this case was wrongly decided and should not be followed. We disagree and follow the reasoning of our Division Six colleagues.

#### **DISPOSITION**

The order is affirmed.

IWASAKI, J.\*

We concur:

PERLUSS, P. J.

ZELON, J.

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