

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL OROZCO,

Defendant and Appellant.

B245766

(Los Angeles County
Super. Ct. No. VA123240)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert J. Higa, Judge. Affirmed as modified.

James C. Huber, 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, Lawrence M.
Daniels and Connie H. Kan, Deputy Attorneys General, for Plaintiff and Respondent.

Gabriel Orozco appeals from the judgment entered following his conviction by a jury of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)),¹ possession of concentrated cannabis (Heath & Saf. Code, § 11357, subd. (a)) and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). Orozco's sole contention on appeal is his presentence custody credits should be corrected. We affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

Orozco was found to be in possession of concentrated marijuana and methamphetamine on December 13, 2011, and a handgun and methamphetamine on January 12, 2012. Orozco was thereafter charged in an amended information with one count each of possession of a firearm by a felon and possession of concentrated cannabis and two counts of possession of methamphetamine. The information specially alleged a criminal street gang enhancement (§ 186.22, subd. (b)(1)(A)) and six prior prison term enhancements (§ 667.5, subd. (b)). Represented by appointed counsel, Orozco pleaded not guilty and denied the special allegations.

A jury found Orozco guilty on all counts with the exception of count 2, possession of methamphetamine. The jury also found not true the alleged criminal street gang enhancement.

In a bifurcated proceeding, Orozco admitted the six prior prison term enhancement allegations. The trial court found four of them true and struck one prior prison term enhancement for sentencing purposes.

The trial court sentenced Orozco to an aggregate state prison term of six years, consisting of the upper term of three years for possession of a firearm by a felon, plus three years for the three prior prison term enhancements. The court also imposed concurrent terms of two years each for possession of concentrated cannabis and possession of methamphetamine. The court awarded Orozco 526 presentence custody

¹ Statutory references are to the Penal Code, unless otherwise indicated.

credits (351 actual days and 175 days of conduct credits). Orozco timely filed a notice of appeal.

DISCUSSION

Orozco contends, the People acknowledge and we agree the trial court erred in calculating his award of presentence custody credits as 526 days rather than as 701 days. Orozco's crimes were committed on December 13, 2011 and January 13, 2012, well after the effective date of the current version of section 4019. Accordingly, Orozco is entitled to the current one-for-one credit or an additional 175 days of conduct credits under section 4019, subdivision (f).

DISPOSITION

The judgment is modified to reflect that Orozco has earned 701 days of presentence custody credits, consisting of 351 days in actual custody and 350 days of conduct credits. The superior court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections and Rehabilitation. As modified the judgment is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

SEGAL, J.*

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