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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY JAMES RAGER,

Defendant and Appellant.

B278111

(Los Angeles County  
Super. Ct. No. SA090014)

APPEAL from an order of the Superior Court of Los Angeles County. Leslie E. Brown, Judge. Affirmed.

David R. Greifinger, 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, Senior Assistant Attorney General, Michael C. Keller, Acting Supervising Deputy Attorney General and John Yang, Deputy Attorney General, for Plaintiff and Respondent.

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A trial court revoked Gregory James Rager's (defendant's) probation and imposed the two-year prison sentence that had been previously imposed but suspended. Defendant asserts that the trial court erred in accepting his admission to the probation violation and in imposing sentence. Although defendant's appellate counsel initially filed a brief indicating that there were no meritorious issues on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we ordered full briefing to address issues raised by defendant in a supplemental brief and not addressed by the partial record we were supplied on appeal. Having reviewed the full record and considered the arguments of counsel, we independently conclude that the trial court's orders are correct and affirm the revocation order and sentence.

## **FACTS AND PROCEDURAL BACKGROUND**

### **I. Plea and Sentence**

In June 2015, defendant pled no contest to a single count of second degree burglary (Pen. Code, § 459).<sup>1</sup> The court sentenced defendant to two years in state prison, but suspended execution of that sentence and placed defendant on probation for three years, which included 365 days in jail (less 160 days of custody credit).<sup>2</sup> In August 2015, the court granted defendant a compassionate release from jail after he had served only 84 days of the jail term.

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

<sup>2</sup> The court dismissed the remaining allegations in the operative information—namely, that defendant had served 11 prior prison terms (§ 667.5, subd. (b)) and had one prior “strike” conviction within the meaning of our Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12).

## **II. Probation Violation**

In July 2016, defendant admitted that he was in violation of the conditions of his probation because he had (1) not obeyed all laws (as he had been arrested on a new burglary charge in Riverside County in July 2016), and (2) not enrolled in a mental health program. The court revoked probation and imposed the previously suspended sentence of two years in state prison, with credit for 411 days time served.

## **III. Motion to Withdraw Admission of Probation Violation & Appeal**

In August 2016, defendant filed a motion to withdraw his probation violation admission. The trial court denied the motion, and defendant brought this appeal after obtaining a certificate of probable cause.

## **IV. Postappeal Proceedings**

In October 2016, the trial court granted defendant's request to reinstate probation to place him into a residential treatment program. After not enrolling in the program, defendant in January 2017, admitted he was in violation of his probation, and the court revoked probation and reimposed the two-year prison sentence less 659 days of custody credits—namely, (1) 365 days for the jail term, (2) 238 days (119 actual plus 119 credit) for the time he was in custody between the first revocation and the reinstatement, and (3) 56 days (28 actual plus 28 credit) for the time he was in custody awaiting the second revocation hearing. Defendant was released from custody on February 10, 2017, and placed in postrelease community supervision.

## **DISCUSSION**

Defendant raises three challenges to his revocation and sentence: (1) his admission of the probation violation is invalid;

(2) he was sentenced twice for the same probation revocation; and  
(3) the trial court incorrectly calculated his custody credits.

Defendant's first argument has been waived and lacks merit. Although he checked the box "validity of . . . admission" on his notice of appeal, he provides no argument—factual or legal—on this issue in his supplemental brief. This amounts to a waiver. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 363-364.) Further, we have reviewed the transcript for his admission of the probation violation, and independently conclude that the waiver was knowing and voluntarily. (§§ 1203.2, subds. (a), (b)(1), 1203.3, subd. (b), 3000.08; see *People v. Rodriguez* (1990) 51 Cal.3d 437, 446-447 [burden of proof is preponderance of the evidence].)

Defendant's second argument is factually invalid because he was not sentenced two times for the same probation violation. Rather, his probation was revoked; it was reinstated at his request; and then it was revoked again when he did not comply with the terms of reinstatement. What is more, the court gave defendant custody credit for the time he spent in custody between the time of the first revocation and the reinstatement.

Defendant's final argument attacking the award of custody credits is both moot and without merit. It is moot because defendant was released from custody on the revocation on February 10, 2017. (See, e.g., *People v. Valencia* (2014) 226 Cal.App.4th 326, 329 [attack on custody credits moot where defendant is released from custody absent further parole period or fines imposed].) Defendant counters that he is still in custody; he is, but he is in custody for a violation of his postrelease community supervision (see *People v. Rager* (Super. Ct. L.A. County, 2017, No. 7PR01268)), which is a separate proceeding

(see § 3455). By definition, any period of custody that is part of postrelease community supervision is discrete from custody served prior to release. Even if we ignore the mootness of this issue, defendant is incorrect that he was entitled to additional credits. If anything, he was entitled to *fewer* credits because the trial court erroneously gave him credit for the full 365-day jail term he was *supposed* to serve rather than the 84-day jail term he *did* serve (along with an additional 84 days of conduct credits). The error in defendant's favor does not aid defendant on appeal.

### **DISPOSITION**

The order is affirmed.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, Acting P. J.  
CHAVEZ

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

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