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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

SITHA CHUM,

Defendant and Appellant.

B265621

(Los Angeles County
Super. Ct. No. KA048798)

APPEAL from a judgment of the Superior Court of Los Angeles County, Wade Olson, Judge. Affirmed as modified.

Juliana Drous, 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, Assistant Attorney General, Scott A. Taryle and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Sitha Chum appeals from the court's denial of his motion for correction of the record. Appellant argues he is entitled to two additional days of actual custody credits. We agree and modify the judgment to increase appellant's actual custody credits by two days to 119.

FACTUAL AND PROCEDURAL SUMMARY

Following a jury trial, appellant was convicted of two counts of first degree attempted murder (Pen. Code §§ 664/187)¹ and one count of shooting at an inhabited dwelling (§ 246). Two firearm enhancements were found to be true. On October 4, 2000, appellant was sentenced to consecutive sentences of 15 years to life for all three counts, but the sentence on the section 246 count was stayed. Twenty years were imposed for each of the firearm enhancements. In total, appellant was sentenced to 70 years to life. Appellant was granted 134 days of credit for time served, 117 actual days, and 17 days of local conduct credit.

On January 2, 2015, proceeding pro se, appellant filed a motion for correction of the record, arguing he should have been awarded 119 actual days, plus 17 local credit days, for a total of 136 days.² The superior court denied appellant's motion, explaining that the "credits appear correct."

Appellant filed a notice of appeal on April 27, 2015. We granted appellant relief from default for the late filing of the notice of appeal.

¹ All further statutory references are to the Penal Code.

² On appeal, appellant's attorney argues that appellant's calculations seem to be incorrect because appellant's motion indicated he was arrested on January 8, 2000 and sentenced on October 4, 2000, which would add up to 270 actual days, plus 40 days local credit, for a total of 310 days credit for time served. Respondent addresses this discrepancy, arguing that the January 8, 2000 date appears to have been an inadvertent error by appellant because the crime was not committed until June 8, 2000. We take judicial notice of our opinion in appellant's 2002 appeal, (Evid. Code, § 452, subd. (d)), where we stated that the crime was committed on June 8, 2000, and appellant was arrested the same day. (*People v. Noun* (Aug. 28, 2002, B145320) [nonpub. opn.])

DISCUSSION

“A sentence that fails to award legally mandated custody credit is unauthorized and may be corrected whenever discovered. [Citation.]” (*People v. Taylor* (2004) 119 Cal.App.4th 628, 647.) “In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail . . . , all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment.” (§ 2900.5, subd. (a).) An award of actual custody credit includes the day of arrest and the day of sentencing. (*People v. Morgain* (2009) 177 Cal.App.4th 454, 469.)

Appellant argues he is entitled to two additional days of actual custody credits. Respondent concedes the point. We accept respondent’s concession. Appellant was arrested on June 8, 2000 and sentenced on October 4, 2000, thus he served 119 days in jail from the date of his arrest to the date of sentencing.

Accordingly, appellant is entitled to two additional days of actual credit.

DISPOSITION

The judgment is modified to increase appellant’s custody credits by two days. The trial court is directed to amend the abstract of judgment to reflect this modification.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.