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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re

MEGGEN G. MASSEY

on

Habeas Corpus.

No. B283500

(Super. Ct. No. BA440307)

ORIGINAL PROCEEDING; petition for writ of habeas corpus. Carol H. Rehm, Judge. Writ granted.

Susan Morrow Maxwell, under appointment by the Court of Appeal, for Petitioner.

Xavier Becerra, Attorney General, Phillip J. Lindsay, Senior Assistant Attorney General, Julie A. Malone, Supervising Deputy Attorney General, Nikhil Cooper, Deputy Attorney General, for Respondent.

### ***Habeas Corpus Relief is Appropriate***

On June 8, 2016, petitioner Meggen G. Massey entered a no contest plea to one count of arson (Pen. Code, § 451, subd. (b))<sup>1</sup> in exchange for dismissal of the remaining counts, a five-year sentence, and an agreement to receive 50 percent custody credits. On January 4, 2017, the trial court sentenced pursuant to the plea agreement to the mid-term of five years. Her counsel asked: “That is a 50 percent sentence, correct, Your Honor?” The court confirmed: “That is correct. That was the agreement.”

Arson is a violent and serious felony under sections 667.5, subdivision (c)(10) and 1192.7, subdivision (c)(14), however, and Massey’s credits are statutorily limited to 15 percent. (§ 2933.1, subd. (a).) Accordingly, the California Department of Corrections and Rehabilitation (CDCR) has advised Massey she is receiving credits at a 15 percent rate, not the promised 50 percent. On June 30, 2017, asserting her plea agreement has been violated, Massey petitioned for habeas relief, seeking to withdraw her plea.

Massey’s plea agreement has been violated; but, as all parties agree, it provided for an unlawful sentence and cannot be enforced. (*People v. Renfro* (2004) 125 Cal.App.4th 223, 233; *In re Williams* (2000) 83 Cal.App.4th 936, 945.)

Massey is entitled to habeas corpus relief. We accordingly remand to permit her to withdraw her no contest plea and resume proceedings on all the original charges. (*People v. Renfro, supra*, 125 Cal.App.4th at p. 233; see also *In re Williams, supra*, 83 Cal.App.4th at p. 944.)

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

***The CDCR is a Proper Party to this Petition***

In its return and at oral argument, the CDCR asked to be dismissed from the petition, arguing it cannot provide Massey any relief as the CDCR was not a party to the plea agreement and has no stake in the resulting conviction.

“The role that the writ of habeas corpus plays is largely procedural. It “does not decide the issues and cannot itself require the final release of the petitioner.” [Citation.] Rather, *the writ commands the person having custody of the petitioner* to bring the petitioner “before the court or judge before whom the writ is returnable” (Pen. Code, § 1477), except under specified conditions (*id.*, §§ 1481-1482), and to submit a written return justifying the petitioner’s imprisonment or other restraint on the petitioner’s liberty (*id.*, § 1480).’ (*People v. Romero* (1994) 8 Cal.4th 728, 738 . . . , fn. omitted, italics added.)” (*People v. Villa* (2009) 45 Cal.4th 1063, 1073.) For that reason, a writ of habeas corpus “must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court or judge before whom the writ is returnable, at a time and place therein specified.” (§ 1477.)

Because Massey is currently in the custody of the CDCR, the CDCR is a proper respondent in this case. Its request for dismissal is denied.

### **DISPOSITION**

The petition for writ of habeas corpus is granted. The matter is remanded to the superior court for further proceedings consistent with this opinion.

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DUNNING, J.\*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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