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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GREGORY DABNEY, Defendant and Appellant.	B271226 Los Angeles County Super. Ct. No. SA077574

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette Verastegui, Judge. Affirmed as modified with directions.

Heather J. Manolakas, 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, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

After his mental competence was restored, defendant Gregory Dabney pled no contest to second-degree robbery and admitted several prior convictions. The trial court sentenced him to 18 years in prison and awarded him 1,760 days of custody credit. On appeal, defendant contends the court erred by refusing to hold another mental competency hearing before accepting his plea, and he is entitled to two additional days of presentence custody credit. We conclude defendant did not establish a substantial change of circumstances casting doubt on the validity of the previous finding that his competence had been restored. We conclude, however, he is entitled to 1,762 days of custody credit and modify the judgment accordingly. As modified, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Robbery

In April 2011, defendant entered a bank in Beverly Hills. He asked a financial officer in the front of the bank for a piece of paper. Defendant then approached a customer service manager and passed her a note. The noted stated: "Give me all the money. If not, someone will get killed." Defendant also told the manager to remain silent and to give him money or someone would be killed. The manager responded by giving defendant $1,400, some of which included "bait" money.

2. Defendant's Arrest and the Finding of Incompetence

In early May 2011, the People charged defendant with robbery (Pen. Code,[1] § 211). He was arrested on May 29, 2011. In July 2011, defense counsel declared a doubt as to defendant's mental competence to stand trial. The court suspended defendant's criminal proceedings and ordered an evaluation of his mental competence under section 1368.

Defendant was evaluated by three court-appointed experts: Dr. Timothy D. Collister, a psychologist, Dr. Joseph Simpson, a psychiatrist, and Dr. Michael P. Maloney, a psychologist. All three doctors submitted written evaluations. Drs. Collister and Simpson concluded defendant was incompetent to stand trial, while Dr. Maloney concluded defendant was competent.

Dr. Collister diagnosed defendant with a developmental disorder—specifically, mild mental retardation—and two mental disorders: major depressive disorder with psychotic features and a non-specified psychotic disorder. Defendant's incompetence stemmed from "a combination of limited intellectual functioning, as well as the psychiatric disturbance." Dr. Collister opined that defendant's competence potentially could be restored with "more aggressive treatment of [defendant's] psychiatric disturbance" as well as "competence training."

Dr. Maloney disagreed with Dr. Collister's assessment that defendant was incompetent to stand trial as a result of any developmental disability. In Dr. Maloney's opinion, defendant simply displayed a lack of motivation in responding to competency-based questions. Dr. Maloney believed that if court and trial related issues were explained to defendant in a

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[1] All undesignated statutory references are to the Penal Code.

"straightforward, simple manner," he would be competent to stand trial.

Dr. Simpson reviewed Dr. Collister's and Dr. Maloney's written reports in evaluating defendant. In Dr. Simpson's opinion, defendant's understanding of the courtroom proceedings and his "complex legal situation" was poor, and his "mood symptoms" would interfere with his ability to assist his counsel in preparing his defense. Like Dr. Collister, Dr. Simpson believed that defendant's competence could likely be restored with appropriate antipsychotic medication.

The court conducted a competency hearing on April 16 and 17, 2012. Dr. Simpson testified for defendant, and Dr. Maloney testified for the People. On the second day of the hearing, the parties stipulated that defendant was diagnosed with mild mental retardation in 2008 and is a client of the South Central Los Angeles Regional Center. After the hearing was completed, the court found defendant incompetent to stand trial. Specifically, the court found defendant was unable to understand the nature of the proceedings against him and was unable to assist his counsel in a rational manner. On May 14, 2012, the court ordered defendant transferred to Porterville Developmental Center (Porterville) for treatment.

3. Defendant's Treatment

In April 2013, Dr. Lananh Nguyen, a psychologist at Porterville, submitted her first progress report. Since being admitted to the developmental center, defendant had received "Competency to Stand Trial" training, which consisted of "group discussion, trainer presentation[s], mock trials, audio visual aids, and bi-weekly tests." On three different occasions between early January and late February 2013, defendant was assessed in 14

different "domains" intended to gauge a person's competence to stand trial. According to Dr. Nguyen, defendant scored "a 2 'borderline incompetent' in the majority of the domains." Dr. Nguyen concluded: "At this time, [defendant] does not appear to possess the present ability to consult with an attorney with a reasonable degree of rational and factual understanding. He was unable to demonstrate a rational and factual understanding of the proceedings against him . . . ."

Dr. Nguyen submitted her second progress report in October 2013. Although defendant showed some improvement across the 14 domains during three evaluations performed between early June and late September 2013, Dr. Nguyen concluded defendant remained incompetent to stand trial and recommended he continue receiving competency training.

In April 2014, Dr. Nguyen submitted her third progress report. According to Dr. Nguyen, defendant appeared to be intentionally exaggerating his cognitive defects. As a result, Porterville staff administered two tests to determine whether defendant was malingering: the "Test of Memory Malingering" (TOMM) and the "Inventory Legal Knowledge" (ILK). Defendant's scores on both tests suggested he was malingering. Although Dr. Nguyen acknowledged defendant "may have some true cognitive impairment," she believed he was "feigning or exaggerating his cognitive defects for the personal gain of avoiding prosecution." Dr. Nguyen also believed the results of defendant's evaluations outlined in her first two progress reports were "highly unreliable" because defendant "likely did not put forth his best effort and knows much more than he is willing to acknowledge." Dr. Nguyen opined that defendant's current charges and potential consequences "appear to be a significant

factor in [his] lack of motivation to attain competency." Even though defendant appeared to be malingering, Dr. Nguyen could not conclude his competence had been restored.

Dr. Nguyen submitted her fourth and final progress report in October 2014, in which she concluded defendant was competent to stand trial. According to Dr. Nguyen, defendant was fully capable of tracking and remembering information, such as the time and date of specific scheduled activities and the exact name and dosages of his medications, including medications he took before being admitted to Porterville. Defendant was also able to report the side effects of his medications and how his body responds to different doses of medication, and he would request medicine by name and specific dosage. Defendant would frequently take charge in group settings, and he explained various concepts to other developmental center clients, such as how to discipline children, how to use positive reinforcement, and how to impart communication skills. According to Dr. Nguyen, it was "highly unlikely" that defendant's ability to remember and process information would not translate to his criminal proceedings.

4. The Restored Competence Finding

On October 15, 2014, Porterville certified that defendant was competent to stand trial and requested the court to hold a hearing on the issue. Porterville also advised that a "speedy trial is important for the maintenance of [defendant's] trial competency."

The court appointed Dr. Lydia Bangtson to evaluate defendant. Dr. Bangtson concluded defendant was "competent to stand trial, but barely." In Dr. Bangtson's opinion, defendant was not malingering; rather, he displayed difficulty regulating his

emotions and taking in and processing information that was presented to him orally. According to Dr. Bangtson, defendant's "problems are primarily psychiatric, and while he likely does have some cognitive defects, emotional problems are more likely to interfere with his ability to make use of the cognitive resources he has." Nevertheless, defendant would be capable of understanding the nature of his criminal proceedings and working with defense counsel in a rational way if court related concepts were explained to him simply and repeated more than once.

On December 12, 2014, the court held a hearing to determine whether defendant's competence had been restored. Defense counsel submitted on Dr. Bangtson's finding that defendant was competent to stand trial. Based on Dr. Bangtson's report and the October 15, 2014 certification of mental competence filed by Porterville, the court found by a preponderance of the evidence that defendant was competent to stand trial. The court reinstated defendant's criminal proceedings, and defendant was transferred back to county jail on December 16, 2014.

5. The Charges and the Court's Denial of Defendant's Requests for a Second Competency Hearing

Following a preliminary hearing held in January 2015, defendant was held to answer for the robbery. On February 10, 2015, the People filed an information charging defendant with second degree robbery. The information alleged that defendant had suffered two prior serious or violent felony convictions—a 1987 robbery conviction and a 1996 kidnapping conviction—within the meaning of the Three Strikes law (§§ 667, subds. (a)–

(j); 1170.12, subd. (b)), and that he had served six prior prison terms (§ 667.5, subd. (b)).

At an April 29, 2015 pretrial hearing, defense counsel raised a doubt about defendant's competence. Counsel told the court that, after the previous hearing, she had called Dr. Eric Kalikstein because defendant had been difficult to deal with at that hearing. Based on counsel's description of defendant's behavior, Dr. Kalikstein believed "very strongly" that defendant's case was a "competency case," and he told counsel that he was willing to be appointed to evaluate defendant. The court told counsel it would not conduct a competency hearing unless counsel made a showing of good cause to hold such a hearing.

On May 26, 2015, defense counsel again told the court she was concerned about defendant's competence to stand trial. But counsel could not decide whether she believed defendant was incompetent, telling the court she was "waffling back and forth with a doubt." She asked the court to continue the matter so she could retain an expert to evaluate defendant. The court indicated it was not inclined to grant defendant a continuance, stating it had previously granted a continuance to allow defense counsel to develop the issue of whether defendant remained competent to stand trial, which counsel did not do. The court explained that because a finding of restored competence had already been made, defendant needed to show circumstances had changed to warrant a new competency hearing. Defense counsel responded that based on Dr. Bangtson's finding that defendant was "just barely" competent, counsel was concerned that defendant had since deteriorated such that he was no longer competent to stand trial. The court told defense counsel it would allow her additional time to file a motion to strike defendant's prior serious or violent

felony convictions and to provide the court with any medical reports that may show defendant was no longer competent to stand trial.

At a June 16, 2015 hearing, defense counsel explained what progress she had made in evaluating whether defendant was competent to stand trial. She had recently contacted defendant's case manager at the Regional Center, who explained that she needed to contact "the person who found [defendant] incompetent when he came back from Porterville" to reevaluate defendant. Counsel asked for additional time to "get a 730 evaluation from the doctor who initially found [defendant] incompetent so [she could] feel just a little bit more comfortable with" defendant's case. The court granted defendant a continuance to contact the doctor who originally declared him incompetent and to obtain a new evaluation concerning whether he was currently competent to stand trial.

On July 20, 2015, defendant filed a motion under *People v. Superior Court* (1996) 13 Cal.4th 497 (*Romero*), seeking dismissal of his 1987 robbery and 1996 kidnapping convictions. Among other documents, defendant attached reports prepared by Drs. Collister, Simpson, and Maloney before defendant was declared incompetent, progress reports prepared by Dr. Nguyen while defendant was being treated at Porterville, and Dr. Bangtson's report concluding that defendant's competence had been restored. Defendant, however, did not provide the court with any evaluations that had been performed after his competence was restored, nor did he indicate that any new evaluations had been performed.

On October 5, 2015, the court denied defendant's *Romero* motion. The court informed defendant that the People had offered

him a plea bargain and explained to him the terms of the offer. After the court noted the consequences defendant could face if he were to proceed to trial, defendant exclaimed, "Give me life. I'm not taking 20 years. Go on. Give me life. I can't do nothing. It looks like I'm dying anyway."

On November 5, 2015, defense counsel again declared a doubt about defendant's competence. Counsel informed the court that one of defendant's sons had recently been killed in a car accident and that his other son had been removed from his mother's custody. Counsel believed that defendant's mental state had deteriorated since learning about these events.

During the middle of the hearing, defendant asked to speak to the prosecutor. Defendant said, "I gotta get an understanding of what's going on. . . . It may be worse than it is. I made the decision. And when I'm on medication, I mean, I'm good. But I go a different way though. Now I got my babies. They – they ain't got nobody. They ain't got the system." Defendant explained that he had done some "stupid things," that he knew he made "bad decisions," and that he was "getting punished for something [he] did as a youngster when [he] did not have nobody in [his] life." Defendant went on, "I don't want to lose my baby. I made some bad decisions, and I just need the—some help, if I can get some help, support system, I know I can do better. The only thing I got in my life right now—."

When the court started to explain to defendant that the People had taken into account his history when they formed their plea offer, defendant interjected that he "ain't trying to get off." The court explained it would be difficult for defendant to get a better offer from the People because the facts from some of his prior convictions were not good, to which defendant responded, "I

know. . . . I know. I know. They don't look good. . . . I understand that." After the court again explained to defendant the details of the People's offer, it transferred defendant's case to a different courtroom for trial.

After defendant's case was transferred to the new courtroom, the judge raised the issue of defendant's competence. Defense counsel stated that earlier that morning, defendant had told her, "I'm not coming out to court. I'm going to kill myself. My life is over." Counsel explained that defendant had recently found out that one of his sons had died in a car accident and that his other son was being placed in foster care. Counsel also informed the court that when she tried to explain the People's offer to defendant earlier that day, he was not able to "discuss" the case or otherwise assist her with it. Counsel believed defendant would be unable to assist her with his case and argued she had made a sufficient showing of changed circumstances from the time of the court's December 2014 competency determination.

The court denied defendant's request for a new competency hearing, finding he did not make a sufficient showing to raise a serious doubt about his competence. The court found defendant had not presented any evidence establishing his competence had deteriorated from the time it was found to be restored in December 2014. The court reasoned: "I can understand that [the events concerning defendant's sons] are causing him great distress. I can understand why those would cause him to not really focus on what's at hand. But beyond that, even though it is a changed circumstance in his reality, it's not a situation which if he was, for example, schizophrenic and he started decompensating, and started hearing voices in his head again, started hallucinating again because he wasn't taking his

medication . . . And so it seems to me that the information that's been provided really isn't of that great of significance which would cause the court to declare a doubt. . . . [A]t this point, the court has not heard sufficient evidence to declare a doubt pursuant to [section] 1368."

6. Defendant's Plea, Sentence, and Appeal

After denying defense counsel's request to conduct a second competency hearing, the court explained some aspects of the legal proceedings to defendant. Specifically, the court asked defendant if he knew what a jury trial was, to which defendant responded, "A lot of people." The court then briefly explained the jury selection process and asked defendant whether he understood the concept, to which he replied, "Yeah." The court also told defendant he could consult with his counsel to decide whether he wanted to be tried by a jury or accept the People's offer. At that point, defendant exclaimed, "I know a lot of things. I think I'm being—some things I'm good at, some things I'm not. And I don't mean to harm nobody. I do things I don't understand sometimes." The court cut defendant off, warning him that any incriminating statements he made in court could be used against him. Defendant remained silent when the court asked him whether he wanted to talk to his counsel in private or with the court on the record.

Defendant then left the courtroom while defense counsel, the prosecutor, and the court discussed whether the People would be willing to lower their offer to defendant. When defendant returned a short time later, he addressed the court: "I want to ask you, I want to know if I can go home, go back to sleep on it, and come back later? If it's all right with you, I'll sleep on it and come back tomorrow." The court told defendant that he needed to

make up his mind that day because it planned to impanel a jury the next day.

Defendant responded by offering the court documents from his son's custody proceedings and a photograph of his other son who had recently passed away, as well as an article from a newspaper, entitled "Bank Robber with 40-year Criminal History Gets 10 Years." Defendant stated, "I don't know what's on your mind, but she's got newspapers—." The court stated it did not know anything about the case referenced in the newspaper article and explained to defendant that the People had modified their offer. After defendant spoke with his counsel, he told the court he did not want to accept the People's offer. Later, defendant waived his right to a jury trial and agreed to be tried by the court.

Defendant's trial began on November 6, 2015. Before the trial resumed on November 10, 2015, defendant informed the court he would like to accept the People's offer of 18 years in prison. As the prosecutor advised defendant of the rights he would have to waive to enter his no contest plea, defendant stated that he understood each of the prosecutor's advisements and that he was pleading voluntarily and freely. Defendant then entered his plea of no contest to the robbery charge, and admitted his 1996 kidnapping conviction as a prior strike and the 1987 robbery conviction as a "five-year prior" under section 667, subdivision (a). Defendant also admitted three prior convictions as "one-year priors" under section 667.5, subdivision (b). After counsel joined in the waivers and stipulated to a factual basis, the court found defendant knowingly, intelligently, expressly, and understandingly waived his constitutional rights. Consistent with the plea agreement, the court sentenced defendant to a total

term of 18 years in prison, consisting of the five-year midterm for the robbery count, doubled to 10 years under the Three Strikes law, plus five years for the 1987 robbery conviction and three years for the three 1-year prior convictions. The court awarded defendant a total of 1,760 days of custody credit.

This court ordered the trial court to deem defendant's notice of appeal and request for a certificate of probable cause timely filed. Thereafter, the trial court granted defendant's request for a certificate of probable cause.

DISCUSSION

1. The trial court did not err when it denied defendant's request to conduct a second competency hearing.

Defendant contends the court violated his federal constitutional rights and state law when it refused to hold a second competency hearing before he was sentenced in November 2015. Specifically, he claims he presented sufficient evidence of a change in his ability to understand the criminal proceedings and to participate in his defense to raise a serious doubt concerning his competence to stand trial. As we explain below, the court did not err in refusing to hold a second competency hearing.

1.1. Applicable Law

The due process clause of the Fourteenth Amendment to the United States Constitution and state law prohibit the state from trying or sentencing a criminal defendant while he is mentally incompetent. (*People v. Mai* (2013) 57 Cal.4th 986, 1032 (*Mai*); § 1367, subd. (a).) A defendant is incompetent to stand trial if he lacks a sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and a rational as well as a factual understanding of the proceedings

against him. (*People v. Rogers* (2006) 39 Cal.4th 826, 846–847 (*Rogers*).)

The court must "suspend trial proceedings and conduct a competency hearing whenever [it] is presented with substantial evidence of incompetence, that is, evidence that raises a reasonable or bona fide doubt concerning the defendant's competence to stand trial." (*Rogers*, *supra*, 39 Cal.4th at p. 847; see also § 1368.) "The court's duty to conduct a competency hearing may arise at any time prior to judgment. [Citation.] Evidence of incompetence may emanate from several sources, including the defendant's demeanor, irrational behavior, and prior mental evaluations." (*Rogers,* at p. 847.)

"[O]nce the accused has come forward with substantial evidence of incompetence to stand trial, due process requires that a full competence hearing be held as a matter of right. [Citation.] In that event, the trial judge has no discretion to exercise." (*People v. Welch* (1999) 20 Cal.4th 701, 738, italics removed (*Welch*).) "[S]ubstantial evidence of incompetence is sufficient to require a full competence hearing even if the evidence is in conflict." (*Ibid*., italics removed.) "The failure to declare a doubt and conduct a hearing when there is substantial evidence of incompetence . . . requires reversal of the judgment of conviction." (*Rogers*, *supra*, 39 Cal.4th at p. 847.)

If there is less than substantial evidence to cast doubt on the defendant's competence to stand trial, however, "[i]t is within the discretion of the trial judge whether to order a competence hearing. When the trial court's declaration of a doubt is discretionary, it is clear that 'more is required to raise a doubt than mere bizarre actions [citation] or bizarre statements [citation] or statements of defense counsel that defendant is

incapable of cooperating in his defense [citation] or psychiatric testimony that defendant is immature, dangerous, psychopathic, or homicidal or such diagnosis with little reference to defendant's ability to assist in his own defense [citation].' [Citation.]" (*Welch*, *supra*, 20 Cal.4th at p. 742.)

In addition, "[w]hen a competency hearing has already been held and the defendant has been found competent to stand trial, . . . a trial court need not suspend proceedings to conduct a second competency hearing unless it 'is presented with a substantial change of circumstances or with new evidence' casting a serious doubt on the validity of that finding." (*People v. Jones* (1991) 53 Cal.3d 1115, 1153 (*Jones*).) Although a court generally must declare a doubt when presented with substantial evidence of incompetence, despite any contrary personal observations the court has made, "when, as in this case, a competency hearing has already been held, the trial court may appropriately take its personal observations into account in determining whether there has been some significant change in the defendant's mental state." (*Ibid.*)

1.2. Analysis

As noted above, defendant was first declared incompetent to stand trial in April 2012, and the court found his competence had been restored in December 2014. After the court found defendant's competence was restored, and before defendant entered his plea and was sentenced, defense counsel made several requests for the court to reconsider whether defendant was competent to stand trial. Counsel, however, never established there was a substantial change in circumstances from the time defendant's competence was restored or that there was

new evidence that would cast a serious doubt on the finding of restored competence.

To be sure, counsel explained to the court that defendant was sometimes difficult to deal with, that he sometimes was not able to discuss his case with her, and that she believed that his learning about the death of one of his sons and the placement of his other son in foster care had affected his competence. But counsel was often equivocal in expressing a doubt about defendant's competence, telling the court she was "waffling back and forth" about whether defendant remained competent and explaining that she could not be sure whether he was competent until he underwent another psychological or psychiatric evaluation. And counsel never provided any evidence to support her claims that defendant's competence had deteriorated despite the court granting her several continuances to obtain such information. (See *Mai*, *supra*, 57 Cal.4th at p. 1033 ["counsel's assertion that his or her client is or may be incompetent does not, in the absence of substantial evidence to that effect, require the court to hold a competency hearing"].)

The court also was able to observe and speak to defendant on several occasions after his counsel raised a doubt about his competence, including during the days leading up to defendant entering his no contest plea and the imposition of his sentence. (See *Jones*, *supra*, 53 Cal.3d at p. 1153 [the court may consider its observations of defendant's behavior in court in determining whether a subsequent competency hearing is necessary].) Defendant's interactions with the court were rational, and they showed he possessed a rational understanding of the nature of the criminal proceedings and was able to assist his counsel in his defense. For example, defendant stated he understood the

concept of a jury trial when the court explained it to him, and he displayed a general understanding of the consequences his prior convictions would have on his potential sentence if he were convicted of the robbery.

Defendant relies on *People v. Murdoch* (2011) 194 Cal.App.4th 230 (*Murdoch*) to support his argument that the court erred in refusing to conduct a second competency hearing. In *Murdoch*, the trial court instituted competency proceedings shortly after the defendant was arraigned. (*Id.* at p. 233.) Two doctors who evaluated the defendant concluded he suffered mental illness but was competent to stand trial because he was on medication. (*Ibid.*) The doctors noted, however, that the defendant had stopped taking his medication and warned that the defendant could decompensate if he remained off his medication. (*Id.* at pp. 233, 237.) After the defendant waived a jury trial on the issue of competence, the court found he was competent to stand trial. (*Id.* at p. 234.) Shortly before trial began, the defendant, who was self-represented, told the court he intended to defend himself on the theory that his victims were not human, and he proceeded under that theory at trial. (*Id.* at pp. 234–235.) The Court of Appeal held the lower court erred in refusing to conduct a second competency hearing because the defendant's "statements taken together with the experts' reports provide the substantial evidence necessary to demonstrate a reasonable doubt as to whether he had in fact decompensated and become incompetent as the experts had warned." (*Id.* at p. 238.)

Defendant asserts this case "has similar elements to *Murdoch*." Specifically, he points out that, like the doctors who examined the defendant in *Murdoch*, the doctors who examined

him shortly before his competence was restored found that his competence was minimal and that it could quickly deteriorate if he did not receive a speedy trial or if he was exposed to triggers that could affect his psychiatric problems. But, unlike in *Murdoch*, there was no evidence in this case to cast serious doubt on whether defendant had remained competent to stand trial. As noted above, defendant never presented any evidence from doctors or other experts suggesting that his competence had deteriorated from the time the court found it had been restored, and defendant was able to rationally engage the court about his case before he entered his plea and his sentence was imposed.

To summarize, the lower court properly denied defendant's request for a second competency hearing because he did not establish there had been a substantial change in his mental competence after the court found his competence had been restored or that there was new evidence that would cast doubt on that finding.

2. Defendant is entitled to two additional days of presentence custody credit.

Next, defendant contends, and the People agree, he is entitled to two additional days of presentence custody credit. A defendant is entitled to credit for the amount of time he or she spends in custody awaiting trial and sentencing. (*People v. Bravo* (1990) 219 Cal.App.3d 729, 735.) The defendant earns custody credit from the day he or she is arrested up to, and including, the day he or she is sentenced. (*Ibid*.) When a defendant has been convicted of a violent felony, he or she is entitled to no more than an additional custody credit equal to 15 percent of the total days the defendant spent in county jail prior to sentencing. (§ 2933.1.)

Defendant was arrested on May 29, 2011, and he remained in custody in county jail until December 20, 2012, when he was transferred to Porterville. Defendant was housed at Porterville from December 21, 2012, until December 15, 2014. He was then transferred back to the county jail on December 16, 2014, and he was sentenced on November 10, 2015.

In total, defendant was in custody in county jail for 902 days, and in custody in Porterville for 725 days, before he was sentenced. He also accrued a credit of 15 percent of the 902 days he spent in jail custody, or an additional 135 days. Accordingly, defendant was entitled to a custody credit of 1,762 days. The court, however, awarded defendant only 1,760 days of custody credit. We therefore modify the judgment to reflect that defendant is entitled to 1,762 days of presentence custody credit.

DISPOSITION

As modified, the judgment is affirmed. The trial court shall correct the November 10, 2015 minute order to reflect that defendant is entitled to 1,762 days of presentence custody credit and forward an amended abstract of judgment to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

KALRA, 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.