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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JOSEPH PRENATT,

Defendant and Appellant.

2d Crim. B270374
(Super. Ct. No. 1441772)
(Santa Barbara County)

Appellant David Joseph Prenatt was charged with 32 counts each of grand theft of personal property (Pen. Code, § 487, subd. (a)),¹ offering securities based on untrue statements of material facts (Corp. Code, § 25401), and engaging in a scheme to fraudulently sell securities (*id.*, § 25541), plus 52 counts of money laundering (§ 186.10, subd. (a)(1) & (2)). The charges included special allegations that the offenses involved a “great taking.”

¹ All statutory references are to the Penal Code unless otherwise stated.

(§§ 12022.6, subd. (a)(2) & (c); 1203.045, subd. (a); 186.10, subd. (c)(1)(A), (B) & (C); 186.11, subd. (a)(1) & (2).)

Appellant pled no contest to seven counts of engaging in a fraudulent scheme (Corp. Code, § 25541) and admitted two of the great taking allegations (§186.11, subd. (a)(2)). The agreement was that, in return for the plea, appellant would receive a ten-year sentence consecutive to the federal sentence that appellant was then serving.

The trial court accordingly sentenced appellant to ten years in state prison, consisting of a five-year, upper term on one count, enhanced by five years for the great taking allegation on that count. The sentences on the other six counts were run concurrently. The court also imposed a series of fines, fees and restitution orders.

Appellant appealed the sentence after we granted him leave to file a late notice of appeal. Appellant contends the trial court erred by failing to award him presentence custody credit against his state sentence. We disagree and affirm.

PROCEDURAL HISTORY²

On June 13, 2013, appellant was convicted in federal court of fraud and making false statements. On December 9, 2013, the court imposed a sentence of 51 months

The plea hearing in this case took place on September 9, 2014, while appellant was still serving his federal

² Since this appeal does not raise any issues regarding the facts of the underlying offenses, we omit the statement of facts except to state that a number of people invested substantial sums of money with appellant. The prosecution alleged that appellant engaged in a “Ponzi” scheme in which he did not invest the money as promised.

sentence. During the hearing, the prosecutor informed appellant of the terms of his state sentence and the credit he would receive for time spent in the Santa Barbara County jail. The prosecutor stated: “[Y]ou’ll be sentenced to ten years state prison, the -- that would be for a high term on Count 3 of the Corporations Code of five years and a five-year consecutive on the [section] 186.11(a)(2) for a total of ten years. The remaining counts would be run at low term of two years concurrent, and that this term of imprisonment would be consecutive to any other sentence including your federal sentence, which would mean that this term will begin after your federal sentence is completed, *although you will get credit for the time you’ve been in custody here [in Santa Barbara County jail] so far.* Additionally, it’s at 50 percent time and that based on the [section] 186.11 enhancement, that you are not eligible for the [section] 1170 subdivision (h) imprisonment, which is local county jail. In other words, with this you’ll be serving your sentence in state prison. Is that your understanding of our agreement in this case?” (Italics added.) Appellant responded: “Yes.”

Prior to sentencing, appellant indicated he wished to withdraw his plea. The trial court appointed the public defender to represent him in further proceedings. At the sentencing hearing, appellant asked to replace appointed counsel. The court conducted a *Marsden*³ hearing and declined to replace counsel.

During sentencing, the probation officer advised the trial court that appellant was not entitled to presentence custody credit because he was serving a sentence in an unrelated case. Both counsel agreed. The prosecutor stated: “That’s correct. I

³ *People v. Marsden* (1970) 2 Cal.3d 118.

spoke with an attorney from the Board of Prisons in the federal system who said that there's -- as far as they are concerned, he has a release date in the federal system. He's getting time as he's sitting here, so I don't believe he's entitled to dual credits."

Appellant's attorney stated: "Judge, just in my understanding of the agreement with Mr. Cota [the prosecutor] on this issue is that if Mr. Prenatt's presence here in Santa Barbara County Jail results in dead time meaning that he doesn't get credit against his federal sentence or this sentence, then we can revisit this issue." The trial court responded: "We certainly can."

DISCUSSION

The parties agree that, as a general rule, when the defendant is already in custody on an unrelated offense, the defendant is not entitled to presentence credit on the new charge. (§ 2900.5, subd. (b); *In re Rojas* (1979) 23 Cal.3d 152, 154; *People v. Phoenix* (2014) 231 Cal.App.4th 1119, 1128.) Appellant contends, however, that the plea agreement entitles him to 349 days of presentence credit against his state sentence as well as credit for time served against the federal sentence. We do not construe the agreement so broadly.

"Because a 'negotiated plea agreement is a form of contract,' it is interpreted according to general contract principles. [Citation.] Acceptance of the agreement binds the court and the parties to the agreement. [Citations.] "When a guilty [or no contest] plea is entered in exchange for specified benefits such as the dismissal of other counts or an agreed maximum punishment, both parties, including the state, must abide by the terms of the agreement." [Citations.] (*People v. Segura* (2008) 44 Cal.4th 921, 930-931.)

“The fundamental goal of contractual interpretation is to give effect to the mutual intention of the parties. [Citation.] If contractual language is clear and explicit, it governs. [Citation.] On the other hand, “[i]f the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.” [Citations.]’ [Citation.] ‘The mutual intention to which the courts give effect is determined by objective manifestations of the parties’ intent, including the words used in the agreement, as well as extrinsic evidence of such objective matters as the surrounding circumstances under which the parties negotiated or entered into the contract; the object, nature and subject matter of the contract; and the subsequent conduct of the parties.’” (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) “[P]lea agreements are interpreted according to the general rule ‘that ambiguities are construed in favor of the defendant.’” (*People v. Toscano* (2004) 124 Cal.App.4th 340, 345.)

As the People point out, there is nothing in the written waiver and plea agreement or in the transcript of the plea hearing demonstrating an agreement to grant presentence custody credit towards both the state sentence and the federal sentence. The only assurance made to appellant by the prosecutor was that he “will get credit for the time [he’s] been in custody here [in Santa Barbara County jail].” To the extent this statement could be viewed as ambiguous, the ambiguity was resolved by the parties’ subsequent conduct. (See *People v. Shelton, supra*, 37 Cal.4th at p. 767.) Both parties conceded at the sentencing hearing that the agreement was that the time

appellant spent in jail would either be attributed to the federal or the state case, but not to both cases.

Nor are we persuaded appellant's reliance on the prosecutor's remark at the plea hearing that the sentence is "at 50 percent time." This comment was not, as appellant suggests, directed at the calculation of presentence credit against his state sentence. Rather, the prosecutor was advising appellant that even though the sentence is "at 50 percent time," it must be served in state prison. The prosecutor specifically explained: "[B]ased on the [section]186.11 enhancement . . . you are not eligible for the [section]1170 subdivision (h) imprisonment, which is local county jail. In other words, with this you'll be serving your sentence in state prison."

We conclude, therefore, that the plea agreement was not violated. Because appellant received credit for his jail time against the federal sentence, he is not entitled to any presentence credit against his state sentence.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Jean M. Dandona, Judge
Superior Court County of Santa Barbara

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