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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.

TERRY S. BOYLAND,

Defendant and Appellant.

B281016

(Los Angeles County  
Super. Ct. No. BA395468)

THE COURT:\*

On October 2, 2012, Terry S. Boyland (appellant) pleaded no contest to human trafficking of a minor (Pen. Code, § 236.1,

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\* ASHMANN-GERST, Acting P. J., CHAVEZ, J., GOODMAN, J.†

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

subd. (a)).<sup>1</sup> He was sentenced to six years in prison. Execution of the sentence was suspended. Pursuant to a plea deal, he was placed on probation for five years under the condition that he serve 365 days in jail. He received 392 days of custody credit to be applied to a future sentence.

On December 28, 2015, the trial court was advised that appellant was sentenced to prison in Maricopa County, Arizona for one and a half years. As a result, the trial court revoked appellant's probation and ordered him to appear at a probation revocation hearing. At that hearing, which happened more than a year later, the prosecutor established that appellant was arrested for pandering in Arizona on August 27, 2014, and later convicted. The trial court found him in violation of his probation and imposed the previously suspended six-year sentence. Appellant received 569 days of custody credits, which included the original 392 credits plus 89 actual days and 88 days for good time/work time. Calculating backwards, the 89 actual days of credit indicated that appellant was in custody at least since October 28, 2016.

Appellant appeals from the order revoking his probation and imposing the previously suspended sentence. Defendant's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) raising no issues. On August 8, 2017, we notified defendant of the no merit brief and gave him 30 days to file his own brief or letter setting forth any contentions he wishes us to consider. He submitted a letter brief in which he states the following: "In August of 2014[,] I caught a case in the State of Arizona, out on bail in Arizona, then violating my probation

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

agreement in California. On July 7, 2015[,] I turned myself in to Arizona Department of Corrections . . . for a sentence of 1.5 [years]. [July 30, 2016] [was the] release date for that case. On or around March of 2016, California then placed a felony detainer on me. On October 28, 2016[,] I was then extradited back to California for violation of probation[,] an[d] sentenced to [six years with the California Department of Corrections]. I'm asking the court to grant me credit for the time the detainer was placed until [October 28, 2016]."

The record is unclear regarding when and if California issued a detainer. Also, it is unclear as to when appellant was released from custody on the Arizona case. In a June 7, 2016 motion to quash warrants, appellant represented that July 30, 2016, was the earliest Arizona release date. The record, however, contains a September 1, 2016 letter from appellant to the trial court indicating that he was still in Arizona State Prison. At the probation revocation hearing, the prosecutor indicated that appellant "was released on October 14th, 2016." Presumably, he was referring to appellant's release from Arizona custody. Even if he was released on October 14, 2016, the record fails to establish where he was from that date until October 28, 2016. In other words, it fails to establish whether he was in custody as a result of the California case, i.e., because of a detainer.

Pursuant to section 4019, subdivision (a)(1) a prisoner is entitled to custody credits for "all days of custody from the date of arrest to the date on which the serving of the sentence commences . . . ."

As a limitation, section 2900.5, subdivision (b) provides that "credit shall be given only where the custody to be credited is

attributable to proceedings related to the same conduct for which the defendant has been convicted.”

Based on section 2900.5, appellant cannot claim custody credits for time spent in custody on the Arizona case because his incarceration was not attributable to his California case. If he was released on October 14, 2016, he is claiming at least 14 days of custody credit. But, as we have said, the record does not establish his whereabouts after his release, and there is only an inference that he was detained in Arizona because of his California case. Notably, appellant does not contend he was held by Arizona authorities for that time, though that is certainly suggested by his letter.

Regardless of the foregoing, section 1237.1 provides: “No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court, which may be informally in writing. The trial court retains jurisdiction after a notice of appeal has been filed to correct any error in the calculation of presentence custody credits upon the defendant’s request for correction.”

The only exception to this rule is that when other appellate issues must be decided, a reviewing court “may simply resolve the custody credits issue in the interests of economy.” (*People v. Jones* (2000) 82 Cal.App.4th 485, 493 (*Jones*).)

Appellant did not make a motion in the trial court asking it to correct a calculation error regarding his presentence custody credits, and the *Jones* exception does not apply because appellant

has not identified any other issues for us to decide. Thus, while it appears appellant might be entitled to additional days of presentence custody credit, we deem this portion of the appeal premature. Accordingly, this portion of the appeal must be dismissed without prejudice to appellant filing a motion in the trial court to correct any errors in the calculation of presentence custody credits.

With respect to issues not raised by appellant (i.e., substantive issues pertaining to probation revocation), we conclude that he received adequate and effective appellate review of the order entered against him by virtue of counsel's compliance with the *Wende* procedure, and our review of the record. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 123–124.)

The portion of the appeal pertaining to appellant's custody credits is dismissed as premature. In all other respects, the trial court's order is affirmed.

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