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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.

LEE DENVER FORD, JR.,

Defendant and Appellant.

B270271

(Los Angeles County
Super. Ct. No. NA099869)

APPEAL from a judgment of the Superior Court of Los Angeles County, Judith L. Meyer, Judge. Affirmed as modified.

James R. Bostwick, Jr., 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, Scott A. Taryle and Rene

Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Lee Denver Ford, Jr. appeals from his sentence, following his guilty plea to one count of residential burglary. He contends that the trial court erred in imposing a criminal protective order, and that he is entitled to ten additional days of conduct credit. The People concede the sentencing errors. Accordingly, we will modify appellant's sentence to delete the protective order and to award an additional ten days of conduct credit.

FACTUAL BACKGROUND & PROCEDURAL HISTORY¹

On August 6, 2014, appellant entered the apartment of the female victim, and stood in the doorway of her bedroom, looking at her. Later, the victim received a letter from appellant she considered threatening.

On August 8, 2014, appellant was charged with first degree burglary with a person present. (Pen. Code, § 459.)²

¹ Because appellant pled guilty, the factual background is drawn from the probation officer's report.

² All further statutory citations are to the Penal Code, unless otherwise stated.

On August 22, 2014, the trial court declared doubt as to appellant's mental competence to stand trial pursuant to section 1368. On February 20, 2015, the court found appellant mentally competent and reinstated criminal proceedings. Subsequently, appellant pled guilty to residential burglary with a person present.

On March 5, 2015, the court sentenced appellant to four years in state prison. It issued a protective order pursuant to section 136.2, subdivision (i)(1), prohibiting appellant from having contact with the victim for 10 years. It awarded appellant a total of 224 days of custody credit, consisting of 212 days of actual custody credit and 12 days of conduct credit. Appellant timely appealed.

DISCUSSION

A. *Protective Order*

Appellant contends the trial court lacked statutory authority to impose the protective order under section 136.2, subdivision (i)(1). Respondent agrees.

Section 136.2, subdivision (i)(1) provides: "In all cases in which a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or 262, or any crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim.

The order may be valid for up to 10 years, as determined by the court. . . .”

Here, appellant was convicted of residential burglary in violation of section 459. That crime is not among the crimes enumerated in section 136.2, subdivision (i)(1). Nor is it a crime that requires appellant to register as a sex offender under section 290. (See § 290, subd. (c) [listing offenses].) Accordingly, the court lacked statutory authority to impose the protective order, and it must be stricken. (See, e.g., *People v. Robertson* (2012) 208 Cal.App.4th 965, 996 [unauthorized no-contact order must be stricken].)

B. *Custody Credits*

The statutory scheme for custody credits is as follows. Pursuant to section 2900.5, a defendant convicted of a felony or misdemeanor is entitled to credit for all days of custody up to sentencing. (§ 2900.5, subd.(a).) This includes any time spent in a state hospital while declared mentally incompetent to stand trial. (*People v. Mendez* (2007) 151 Cal.App.4th 861, 864.) Pursuant to section 4019, a defendant is generally entitled to two days of conduct credit for every four-day period of incarceration. “Typically, an accused awaiting trial is not statutorily entitled to conduct credits for time spent in a state hospital while subject to a finding of incompetency.” (*People v. Bryant* (2009) 174 Cal.App.4th 175, 182.) “However, it has been held that equal protection requires application of section 4019 credits to presentence confinement in a state facility if the circumstances of the confinement are essentially penal.”

(*Ibid.* [citing cases].) Accordingly, “when the uncontradicted evidence demonstrates the accused’s competency was unquestionably regained as of a date certain . . . , the defendant is entitled to section 4019 conduct credits” (*Id.* at p. 184.) Finally, under section 2933.1, subdivision (a), a defendant convicted of a felony offense listed in section 667.5, subdivision (c) -- which includes burglary -- cannot accrue more than “15 percent of worktime credit.”

Appellant was arrested on August 6, 2014 and sentenced on March 5, 2015. Thus, appellant was entitled to -- and the trial court awarded -- 212 hours of actual custody credit. As to conduct credits, under *People v. Bryant*, appellant was entitled to conduct credit before and after the period during which he was in a state hospital under a finding of incompetency. Here, that time period totaled 64 days, as appellant was admitted to a state hospital on November 19, 2014, and on January 23, 2015, the court was informed that appellant’s mental competency was restored. The time before and after that 64-day period totaled 148 days. Under section 2933.1, appellant was limited to 15 percent of that time, or 22 days of conduct credit. The trial court awarded appellant 12 days, resulting in a deficiency of 10 days. Thus, appellant is entitled to an additional 10 days of conduct credit.

DISPOSITION

The protective order is stricken, and the abstract of judgment amended to award 22 days of conduct credit. As

modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment and forward it to the Department of Corrections and Rehabilitation.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.