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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. GARY WRIGHT, Defendant and Appellant.	B233828 (Los Angeles County Super. Ct. No. NA087491)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur Jean, Jr., Judge. Modified and, as so modified, affirmed.

Elizabeth Garfinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Kim Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Gary Wright appeals from the judgment entered following a jury trial that resulted in his convictions for possession of cocaine and cocaine base for sale. The trial court sentenced Wright to a term of eight years in prison. Wright contends the trial court abused its discretion by denying his *Romero* motion.[1] He also requests that we review the sealed record of the trial court's *Pitchess*[2] examination of police personnel records to determine whether the court abused its discretion by failing to order disclosure. (*People v. Mooc* (2001) 26 Cal.4th 1216.) The People argue that Wright's custody credits were improperly calculated, and that the abstract of judgment must be corrected to delete reference to enhancements that were stricken by the trial court. We modify the judgment to reduce Wright's presentence conduct credits and correct the abstract of judgment as the People request. In all other respects, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*[3]

In the early morning hours of December 5, 2010, Long Beach Police Officers Thomas Robles and Harrison Moore were summoned to a Long Beach apartment to assist other officers who were responding to a call. When they arrived, Wright was standing in the doorway. Robles asked whether Wright had any drugs on his person. Wright responded affirmatively. Robles recovered a baggie of cocaine from Wright's pocket. Officer Moore, meanwhile, discovered three glass pipes containing a white residue, and 34 small, empty plastic baggies, in the apartment. Wright stated the cocaine belonged to him, and he sold it to "people on the street." He admitted using the plastic baggies to package and sell the cocaine. During a booking search, Moore discovered a bag

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1 *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

2 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

3 Because the facts relating to the charged crimes are largely irrelevant to the issues presented on appeal, we briefly summarize them. (*People v. White* (1997) 55 Cal.App.4th 914, 916, fn. 2.)

containing a rock of cocaine concealed in the hem of Wright's pants. An expert opined that Wright possessed the cocaine and cocaine base for sale.

2. *Procedure.*

Trial was by jury. Wright was convicted of possession of cocaine for sale (Health & Saf. Code, § 11351) and possession of cocaine base for sale (Health & Saf. Code, § 11351.5). In a bifurcated proceeding, the trial court found Wright had suffered one prior "strike" conviction (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)).[4] It denied Wright's *Romero* motion and sentenced him to a term of eight years in prison. The court imposed a restitution fine, a suspended parole restitution fine, a court security fee, a laboratory fee, and a criminal conviction assessment. Wright appeals.

DISCUSSION

1. *Review of in camera Pitchess examination of peace officer records.*

Before trial, Wright sought discovery of peace officer personnel records pursuant to *Pitchess v. Superior Court, supra,* 11 Cal.3d 531. Wright's motion sought, as to Officers Moore and Robles, information related to complaints regarding "violations of constitutional rights"; fabrication of charges, evidence, reasonable suspicion or probable cause; dishonesty; perjury; planting evidence; false arrest; illegal searches and seizures; making false police reports, including to "cover up the use of excessive force"; and any other evidence of misconduct amounting to moral turpitude. The trial court found good cause for an in camera review of Officer Moore's records.[5] On February 22, 2011, the

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

[5] The trial court's minute order stated, "[t]he motion is granted as to Officer Moore" without further specifying which particular category or categories of information were included in its ruling. Wright did not, however, establish good cause for disclosure of information unrelated to dishonesty. Wright's motion averred that, contrary to the information in the police report, he did not give officers consent to search, did not tell officers he sold cocaine, and did not admit that the pipes and baggies found in the apartment belonged to him. He did not allege any other misconduct by the officers. Therefore, at a minimum, records related to the use of excessive force or "violation of constitutional rights" would have been irrelevant and not subject to in camera review. "A

trial court conducted an in camera review and concluded no discoverable material existed. Wright requests that we review the sealed transcript of the trial court's *Pitchess* review to determine whether the court abused its discretion by failing to order disclosure of information. (See *People v. Mooc, supra,* 26 Cal.4th 1216.)

Trial courts are vested with broad discretion when ruling on motions to discover peace officer records (*People v. Samayoa* (1997) 15 Cal.4th 795, 827; *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1086), and we review a trial court's ruling for abuse (*People v. Mooc, supra,* 26 Cal.4th at p. 1228; *People v. Hughes* (2002) 27 Cal.4th 287, 330). We have reviewed the sealed transcript of the in camera hearing conducted on February 22, 2011. The transcript constitutes an adequate record of the trial court's review of any document(s) provided to it, and reveals no abuse of discretion. (*People v. Mooc, supra,* at p. 1228; *People v. Hughes, supra,* at p. 330.)

2. The trial court did not abuse its discretion by denying Wright's Romero motion.

a. *Additional facts.*

Prior to sentencing, Wright filed a *Romero* motion asking that the court dismiss his prior strike conviction. At the hearing on the motion, defense counsel argued that the strike prior was remote, having occurred in 1990. She also informed the court that she had spoken to a deputy sheriff, who had advised her Wright was eligible for placement in a community drug rehabilitation program. The deputy indicated he was willing to assist Wright in finding a placement.

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request for information that is irrelevant to the pending charges does not satisfy the specificity requirement." (*People v. Hill* (2005) 131 Cal.App.4th 1089, 1096, fn. 7, disapproved on other grounds in *People v. French* (2008) 43 Cal.4th 36, 48, fn. 5; *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021; *People v. Hustead* (1999) 74 Cal.App.4th 410, 416.) A "showing of good cause must be based on a discovery request which is tailored to the specific officer misconduct that is alleged." (*California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1021.)

The court stated that it had read and considered the *Romero* motion. In the court's view, Wright was "a chronic law breaker." The court referenced three recent misdemeanor cases filed against Wright, observing "[t]hey are traffic and failures to appear and driving on a suspended license." The court opined: "Mr. Wright has no intention of conforming his behavior to [the] law. Maybe at some point he will, but not now."

b. *Discussion.*

In the furtherance of justice, a trial court may strike or dismiss a prior conviction allegation. (§ 1385; *People v. Superior Court (Romero), supra*, 13 Cal.4th at p. 504; *People v. Meloney* (2003) 30 Cal.4th 1145, 1155.) A trial court's refusal to strike a prior conviction allegation is reviewed under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) Under that standard, the party seeking reversal must " 'clearly show that the sentencing decision was irrational or arbitrary. [Citation.]' " (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) It is not enough to show that reasonable people might disagree about whether to strike a prior conviction. (*People v. Carmony, supra*, at p. 378.) Only extraordinary circumstances justify a finding that a career criminal is outside the three strikes law. (*Ibid*.) Therefore, "the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Ibid.*)

When considering whether to strike prior convictions, the relevant factors a court must consider are "whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The three strikes law "not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm . . . . [T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*People v. Carmony, supra*, 33 Cal.4th at

p. 378.) We presume the trial court considered all the relevant factors in the absence of an affirmative record to the contrary. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

The record before us reveals no basis for concluding that, as a matter of law, Wright falls outside the spirit of the three strikes law. Wright's criminal history is lengthy, starting in 1989, when he was arrested for possession of marijuana for sale and placed on probation. After that offense, he was convicted of battery in 1989. In 1990 he was convicted, in three separate cases, of driving without a license, possession of concentrated cannabis, and robbery. He was sentenced to 10 years in prison on the latter charge. In 1999 he was again sentenced to 10 years in prison for the transport or sale of a controlled substance. In 2009 he was charged with failure to appear. On three occasions in 2009 and 2010, he was charged with driving without a valid license. He was on probation at the time he was arrested for the instant crimes. In short, Wright's criminal history demonstrates he is "the kind of revolving-door career criminal for whom the Three Strikes law was devised." (*People v. Gaston* (1999) 74 Cal.App.4th 310, 320; *People v. Pearson* (2008) 165 Cal.App.4th 740, 749.)

Wright argues that his strike prior was remote in time, having been suffered in 1990, and his other offenses were not violent. He characterizes the instant offenses as "minor." However, the fact a prior is somewhat remote has little mitigating force "where, as here, the defendant has led a continuous life of crime" after suffering the prior conviction. (*People v. Pearson, supra*, 165 Cal.App.4th at p. 749; *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [20-year-old felony conviction not remote given defendant's criminal recidivism; a trial court cannot be expected to "simply consult the Gregorian calendar with blinders on"].) As the People point out, it appears the lapses in Wright's criminal history were due to the fact he was incarcerated for various periods. Likewise, the fact a majority of a defendant's offenses were nonviolent "cannot, in and of itself, take him outside the spirit of the Three Strikes law when the defendant is a career criminal with a long and continuous criminal history." (*People v. Strong* (2001) 87 Cal.App.4th 328, 345.) Further, we disagree with Wright's characterization of the instant crimes as minor. As the probation report observed, "Defendant sells the highly

dangerous and addictive cocaine in his community," contributing to crimes committed by addicts in the community.

Wright argues the trial court "acted arbitrarily and irrationally" by failing to consider the circumstances of the 1990 robbery, as well as his " 'background, character, and prospects.' " In particular, Wright faults the trial court for purportedly ignoring the "very unique" fact that a sheriff's deputy had offered to assist in finding a drug rehabilitation program for him, a circumstance Wright characterizes as a favorable "character analysis" and an "extraordinary prospect." Wright overstates the significance of his trial counsel's statements about her conversations with the deputy. Trial counsel simply informed the court that a deputy sheriff, whose job entailed assisting inmates, had met with Wright and believed he would qualify for a community drug treatment program. According to counsel, the deputy was "of the opinion that Mr. Wright is a person who is now of an age that he is really sincerely ready to make a change," and the deputy was willing to assist in finding a placement for Wright. Nothing in the record suggests the court failed to consider counsel's arguments. Certainly, even accepting at face value counsel's uncorroborated statements about the deputy's views, the trial court was not obliged to adopt them. No abuse of discretion is apparent.

Nor is Wright's argument that the court misdescribed his most recent misdemeanor cases persuasive. The court stated it had "three other" misdemeanor cases before it, involving "failures to appear and driving on a suspended license." While only one of the cases involved a failure to appear, the court was correct that Wright was convicted of multiple misdemeanors in 2010. In fact, according to the probation report, there were four, rather than three, recent misdemeanor cases involving Wright. Wright was arrested for failing to appear in March 2009 and for driving without a valid license on April 8, 2009, May 10, 2009, and April 18, 2010; he suffered convictions in each case in 2010. In light of these repeated violations of the law, we cannot fault the trial court for concluding Wright had no intention of conforming his conduct to the law. Wright's speculation that the traffic violations were not "inherently dangerous" and were "likely related . . . to his status as a drug offender" are not persuasive. "[D]rug addiction is not

necessarily regarded as a mitigating factor when a criminal defendant has a long-term problem and seems unwilling to pursue treatment." (*People v. Martinez* (1999) 71 Cal.App.4th 1502, 1511.) "Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling . . . ." (*People v. Myers, supra,* 69 Cal.App.4th at p. 310.) Such is the case here. No abuse of discretion is apparent.

3. *Custody credits.*

Wright served 194 days of actual presentence custody. The trial court awarded him "one for one" presentence conduct credits, for an additional 194 days, giving him a total of 388 days of credit. The People contend Wright's custody credits were miscalculated, and posit that he is in fact entitled to only 96 days of conduct credit. In a supplemental opening brief, Wright disagrees. Although he committed his crimes in December 2010 and was sentenced in June 2011, he contends equal protection principles require that the current, and more generous, version of the applicable statute, section 4019, be applied to him retroactively.

a. *Penal Code section 4019.*

Section 4019 specifies the rate at which prisoners in local custody may earn " 'conduct credit' " against their sentences for good behavior. (*People v. Brown* (2012) 54 Cal.4th 314, 317 (*Brown*); *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1549 (*Ellis*).) The Legislature has amended section 4019 multiple times between 2010 and the present. Before January 25, 2010, a defendant could earn a maximum of two days of local conduct credit for every four days spent in custody. (*Brown, supra,* at p. 318, fn. 4; former § 4019, subd. (f), as amended by Stats. 1982, ch. 1234, § 7, pp. 4553-4554.)

Effective January 25, 2010, amendments to section 4019 doubled the maximum rate to two days of presentence conduct credit for every two days spent in local custody. (*Brown, supra,* 54 Cal.4th at p. 318; *People v. Lara* (2012) 54 Cal.4th 896, 899 (*Lara*); Stats. 2009-2010 (3d Ex. Sess.) ch. 28, § 50.) However, certain defendants, including those who, like Wright, had suffered a prior conviction for a serious or violent felony as defined in sections 667.5 and 1192.7, were ineligible for the accelerated rate and

continued to accrue credits at the previously applicable rate. (*Brown, supra*, at pp. 318-319, fn. 5; former § 4019, subds. (b) & (c).)

Effective September 28, 2010, the Legislature again amended section 4019 to restore the "original, lower credit-earning rate" of two days of local conduct credit for every four days spent in custody. (*Brown, supra*, 54 Cal.4th at p. 318, fn. 3; former § 4019, subd. (f); Stats. 2010, ch. 426, § 2.) At the same time the Legislature amended section 2933—which had previously applied only to prison worktime credits—to encompass presentence conduct credits for defendants who were ultimately sentenced to state prison. (Former § 2933, subd. (e); Stats. 2010, ch. 426, § 1; see *Brown, supra*, at p. 322, fn. 11.) Amended section 2933 provided that notwithstanding section 4019, a prisoner was entitled to one-for-one presentence conduct credits, but excluded from this formula, inter alia, prisoners who had suffered prior convictions for serious or violent felonies. (Former § 2933, subd. (e).) Such prisoners were subject to the less favorable two-for-four day rate.

Most recently, in conjunction with the 2011 realignment legislation, the Legislature amended section 4019 to its current version, operative October 1, 2011, to provide for a maximum of two days of conduct credit for every two days spent in actual confinement. (*Ellis, supra*, 207 Cal.App.4th at p. 1549; § 4019, subd. (f); Stats. 2011, ch. 15, § 482; Stats. 2010-2011, 1st Ex. Sess., ch. 12, § 35.) The current version of the law does not exclude prisoners who have suffered prior convictions for serious or violent felonies from this more generous formula. (See *Lara, supra*, 54 Cal.4th at p. 906, fn. 9; § 4019, subds. (f), (h); see generally §§ 2933.1, 2933.2.) Subdivision (h) of the current statute expressly provides that the new rate is to be applied prospectively only: "The changes to this section . . . shall apply prospectively and shall apply to prisoners who are confined to a county jail . . . for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law."

b. *Wright's conduct credits were miscalculated and must be corrected.*

Wright committed his crimes on December 5, 2010 and was sentenced on June 16, 2011. Therefore, his conduct credits should have been calculated under the provisions of sections 4019 and 2933 in effect at that time, that is, the September 28, 2010 versions. Under those provisions, Wright was not eligible to earn conduct credits at the more generous one-for-one rate because he had suffered a prior conviction for robbery, a serious and violent felony. (Former § 4019, subds. (b), (c); former § 2933; Stats. 2010, ch. 426, §§ 1, 2; § 1192.7, subd. (c)(1)(19), § 667.5, subd. (c)(9).) Instead, he was eligible to earn conduct credit at the six-for-four day ratio. (Former § 4019; *Brown, supra,* 54 Cal.4th at p. 318, fn. 4; Stats 2010, ch. 426, § 2.) Under its express terms, the current version of section 4019 does not apply because Wright's crimes were committed prior to October 1, 2011. (§ 4019, subd. (h); *Brown, supra,* 54 Cal.4th at p. 319 [whether a statute operates prospectively or retroactively is a matter of legislative intent]; *Ellis, supra,* 207 Cal.App.4th at p. 1553.) Accordingly, Wright is not entitled to retroactive application of the 2011 version of section 4019. (See *Brown, supra*, 54 Cal.4th at p. 323, fn. 11 [2011 amendments to section 4019 did not assist defendant, because the statute expressly applied prospectively to prisoners who committed their crimes on or after October 1, 2011, whereas his crime was committed in 2006]; *Lara, supra,* 54 Cal.4th at p. 906, fn. 9 [favorable change in section 4019 did not benefit the defendant "because it expressly applies only to prisoners who are confined . . . '*for a crime committed on or after October 1, 2011*' "].)

When the six-for-four day ratio applies, the " 'proper method of calculating presentence custody credits is to divide by four the number of actual presentence days in custody, discounting any remainder. That whole-number quotient is then multiplied by two to arrive at the number of good/work credits. Those credits are then added to the number of actual presentence days spent in custody, to arrive at the total number of presentence custody credits. [Citations.]' [Citation.]" (*People v. Kimbell* (2008) 168 Cal.App.4th 904, 908-909.) Wright served 194 days of actual presentence custody.

Applying the proper formula, Wright was entitled to 96 days of conduct credit, and a total of 290 days of presentence conduct credit. We order the judgment modified accordingly.

c. *Prospective application of the current version of section 4019 does not violate equal protection principles.*

Notwithstanding the express legislative intent that the 2011 amendments to section 4019 apply only to crimes committed on or after October 1, 2011, Wright contends that equal protection principles require retroactive application of the amendments to him. Wright urges that amended section 4019 creates two classes of prisoners: "those who receive double conduct credits because they committed a crime on or after October 1, 2011" and those who will receive fewer credits because they committed their crimes prior to that date. Wright posits that there is no compelling interest or rational basis to treat the two groups differently. In his view, the state's interest in saving money or "incentivizing" good behavior are insufficient bases for treating the two classes of prisoners differently. In support, Wright relies primarily upon *In re Kapperman* (1974) 11 Cal.3d 542, and *People v. Sage* (1980) 26 Cal.3d 498.

"The concept of equal protection recognizes that persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. [Citation.] Accordingly, ' "[t]he first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." ' [Citation.] 'This initial inquiry is not whether persons are similarly situated for all purposes, but "whether they are similarly situated for purposes of the law challenged." ' [Citation.]" (*Brown, supra,* 54 Cal.4th at p. 328.)

Brown compels rejection of Wright's argument that equal protection principles require retroactive application of amended section 4019. (*Brown, supra,* 54 Cal.4th at pp. 323, fn. 11, 329-330; *Ellis, supra,* 207 Cal.App.4th at p. 1551; see also *Lara, supra,* 54 Cal.4th at p. 906, fn. 9.) *Brown* considered whether the January 25, 2010 amendments to section 4019 should be given retroactive effect. (*Brown, supra,* at pp. 328-329; *Ellis, supra,* at p. 1550.) The court concluded not only that the statute had to be applied

prospectively, but also that prospective application did not violate equal protection principles. (*Brown, supra,* at p. 318.) The conduct credits offered under section 4019 "encourage prisoners to conform to prison regulations, to refrain from criminal and assaultive conduct, and to participate in work and other rehabilitative activities." (*Id.* at p. 317.) *Brown* explained: "[T]he important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows." (*Brown, supra,* at pp. 328-329; *Ellis, supra,* at p. 1551.)

Brown distinguished *In re Kapperman, supra,* 11 Cal.3d 542 as "irrelevant" because it addressed credit for time served, not conduct credit. (*Brown, supra,* 54 Cal.4th at pp. 326, 330.) *Brown* explained: "Credit for time served is given without regard to behavior, and thus does not entail the paradoxical consequences of applying retroactively a statute intended to create incentives for good behavior. *Kapperman* does not hold or suggest that prisoners serving time before and after the effective date of a statute authorizing *conduct* credits are similarly situated." (*Brown, supra,* at p. 330; see also *In re Strick* (1983) 148 Cal.App.3d 906, 912-913.) *Brown* also declined to read *People v. Sage, supra,* 26 Cal.3d 498, as authority for the proposition that prisoners serving time before and after incentives are announced are similarly situated. (*Brown, supra,* at pp. 329-330; see also *Ellis, supra,* 207 Cal.App.4th at p. 1552.)

As is readily apparent, *Brown*'s holding is fatal to Wright's equal protection claim. As *Ellis* explained: "We can find no reason *Brown*'s conclusions and holding with respect to the January 25, 2010, amendment should not apply with equal force to the October 1, 2011, amendment. [Citation.] Accordingly, we reject defendant's claim he is entitled to earn conduct credits at the enhanced rate provided by current section 4019 . . . ." (*Ellis, supra,* 207 Cal.App.4th at p. 1552; see also *People v. Kennedy* (Sept. 14, 2012, H037668) ___ Cal.App.4th __ [2012 Cal.App. Lexis 982]; *People v. Lynch* (Sept. 13, 2012, C068476) ___ Cal.App.4th ___ [2012 Cal.App. Lexis 975].)

4. *Correction of the abstract of judgment.*

The information alleged Wright had served two prior prison terms pursuant to section 667.5, subdivision (b) and had suffered a prior drug-related conviction within the meaning of Health and Safety Code section 11370.2, subdivision (a). The trial court exercised its discretion to strike these enhancements at sentencing. As the People point out, the abstract of judgment incorrectly indicates that the enhancements were stayed, rather than stricken. Where an abstract of judgment differs from the court's oral pronouncements, the abstract does not control. Any discrepancy is deemed to be the result of clerical error, which may be corrected on appeal. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Walz* (2008) 160 Cal.App.4th 1364, 1367, fn. 3; *People v. Zackery* (2007) 147 Cal.App.4th 380, 385; *People v. Price* (2004) 120 Cal.App.4th 224, 242.) Moreover, as the People correctly observe, a court may either impose the enhancements at issue or strike them; they may not be stayed. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241; *People v. McCray* (2006) 144 Cal.App.4th 258, 267.) For these reasons, we order the abstract of judgment corrected to reflect that the enhancements were stricken.

DISPOSITION

The judgment is modified to award Wright 194 days of actual custody credit and 96 days of conduct credit, for a total of 290 days of precommitment credit. The abstract of judgment shall be corrected to strike the Penal Code section 667.5, subdivision (b), and Health and Safety Code section 11370.2, subdivision (a), enhancements. The clerk of the superior court is ordered to prepare an amended abstract of judgment and forward a copy to the Department of Corrections. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.