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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.

JIMMY VAN DANG,

Defendant and Appellant.

B246360

(Los Angeles County
Super. Ct. No. GA086087)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Michael D. Carter, Judge. Affirmed as modified.

Paul R. Kraus, 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, Susan Sullivan Pithey and Shawn
McGahey Webb, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jimmy Van Dang appeals from the judgment entered following the jury verdict finding him guilty of first degree burglary, with the finding that a person was present during the burglary, and second degree burglary of a vehicle. (Pen. Code, §§ 459, 667.5, subd. (c).)¹ After trial, defendant admitted he had a prior serious felony conviction and had served a prior prison term. (§§ 667, subd. (a), 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) He was sentenced to 14 years and four months in state prison. He contends the trial court failed to award the presentence credit to which he was entitled and improperly imposed a fine. We agree he is entitled to additional presentence credit and will order the trial court to correct the abstract of judgment. As modified, we affirm the judgment.

PROCEDURAL BACKGROUND

Because defendant challenges only his sentence, we will not discuss the facts of the case. In imposing sentence, the trial court awarded defendant 277 days of presentence custody credit and 40 days of conduct credit, constituting a total of 317 days of presentence credit. Defendant claims (and the Attorney General agrees) the court ordered him to pay two \$10 crime prevention fines pursuant to section 1202.5. Defendant asserts the court erred in both respects. The Attorney General concedes defendant is correct. We conclude defendant is entitled to additional presentence credit.

With regard to the award of custody credit, the parties correctly note that defendant was arrested on April 7, 2012. He was sentenced on January 10, 2013. Defendant was entitled to credit for both the day he was arrested and the day he was sentenced. (*People v. Browning* (1991) 233 Cal.App.3d 1410, 1412.) Thus, we agree with the parties that he should have been awarded 279 days of presentence custody

¹ All further undesignated statutory references are to the Penal Code.

credit.² In addition, pursuant to section 2933.1, he earned an additional 41 days of presentence conduct credit. His total number of presentence credits is 320 days.

Moving to the crime prevention fine authorized by section 1202.5, the parties assert that the trial court imposed two \$10 fines. They are incorrect. We have reviewed the transcript of the sentencing hearing. The court concluded that defendant did not have the ability to pay any monies in addition to the mandatory court operations fine pursuant to section 1465.8 and the court facilities fine set forth in Government Code section 70373. As a result, it declined to impose any other fines.³ Although the abstract of judgment reflects that defendant was ordered to pay a fine pursuant to section 1202.5, we have the authority to order the abstract corrected if it does not accurately reflect the oral pronouncement of judgment by the trial court. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We do so here.⁴

DISPOSITION

The judgment is modified by awarding 279 days of presentence custody credit and 41 days of presentence conduct credit for a total of 320 days of presentence credit and

² We granted the Attorney General's motion to augment the record with: (1) defendant's ex parte motion to correct presentence custody credit that he filed in the trial court; (2) the minute order reflecting the trial court's order granting defendant partial relief; and (3) the amended abstract of judgment. The court awarded defendant only one day of additional credit instead of the mandated two. Hence, we must correct the record once again.

³ Section 1202.5 allows the court to determine if a defendant has the ability to pay the fine.

⁴ We recognize the trial court imposed only one fine pursuant to section 1465.8 and Government Code section 70373. It was required to impose one fine per conviction, thus, two fines per section, and the abstract states the court did so. Although the abstract of judgment erroneously reflects a fine that the court did not impose, the error is harmless. By failing to impose a mandatory fine, the court rendered an unauthorized sentence (see *People v. Vasquez Diaz* (1991) 229 Cal.App.3d 1310, 1316), which we may correct. (*People v. Smith* (2001) 24 Cal.4th 849, 853.)

striking the crime prevention fines. As modified, the judgment is affirmed. The clerk of the superior court is directed to amend the abstract of judgment and to send a copy to the Department of Corrections and Rehabilitation.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.