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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY SAMPSON,

Defendant and Appellant.

B269503

(Los Angeles County
Super. Ct. No. PA016576)

APPEAL from an order of the Superior Court of Los Angeles County, David B. Gelfound, Judge. Reversed; judgment modified with directions.

Verna Wefald, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael R. Johnsen and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Anthony Sampson, appeals from an order denying his motion to correct his presentence custody and conduct credit. On September 11, 1996, the trial court sentenced defendant to 39 years to life for second degree murder with firearm use and a prior serious felony conviction. (Pen. Code, §§ 187, 667, subds. (b)-(i); 1170.12, 12022.5.)¹ The trial court awarded defendant 901 days of presentence custody credit plus 135 days for good conduct, for a total of 1,036 days. On November 13, 2015, defendant filed a motion to correct that award. The trial court denied the motion. We reverse the order and modify defendant's credits.

An incorrect presentence credit award is a jurisdictional error that may be raised at any time. (*People v. Cardenas* (2015) 239 Cal.App.4th 220, 235; *People v. Taylor* (2004) 119 Cal.App.4th 628, 647.) Defendant was arrested on March 22, 1994, and sentenced on September 11, 1996. He is entitled to credit for: 905 days in presentence custody, including the date of arrest and the date of sentencing (§ 2900.5, subd. (a); *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 48; *People v. Smith* (1989) 211 Cal.App.3d 523, 525-526); plus 135 days for good conduct (§ 2933.1, subd. (a); *People v. Duran* (1998) 67 Cal.App.4th 267, 270; *People v. Aguirre* (1997) 56 Cal.App.4th 1135, 1140-1141; see *In re Reeves* (2005) 35 Cal.4th 765, 775); for a total of 1,040 days. Defendant committed the murder prior to June 3, 1998. Therefore, section 2933.2, subdivision (a) does not preclude a presentence conduct credit award. (§ 2933.2, subd. (d); *People v. Chism* (2014) 58 Cal.4th 1266, 1336; *People v. Flores*

¹ All further statutory references are to the Penal Code.

(2009) 176 Cal.App.4th 1171, 1182; *People v. Hutchins* (2001) 90 Cal.App.4th 1309, 1317.)

The order denying defendant's motion to correct his presentence custody and conduct credit award is reversed. The judgment is modified to reflect 905 days of presentence custody credit and 135 days of conduct credit. Upon remittitur issuance, the superior court clerk is to prepare an amended abstract of judgment that so reflects and deliver a copy to the Department of Corrections and Rehabilitation.

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TURNER, P.J.

We concur:

BAKER, J.

KIN, J.*

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