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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON QUON MCCLAIN,

Defendant and Appellant.

B285430

(Los Angeles County  
Super. Ct. No. SA095586)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvette Verastegui, Judge. Remanded with direction; judgment of conviction otherwise affirmed.

Suzan E. Hier, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Michael J. Wise, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant and appellant Jason Quon McClain appeals from a judgment sentencing him to six years in state prison upon his plea to one count of taking a vehicle without the owner's consent pursuant to Vehicle Code section 10851 subdivision (a) and his admission of one prior serious felony conviction pursuant to Penal Code section 1170.12.<sup>1</sup> We remand with direction as to the calculation of the defendant's presentence custody credits, but otherwise affirm the judgment of conviction.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. Factual background**

On May 24, 2016, the defendant, was arrested while driving a stolen car. On March 20, 2017, he was once again arrested while in possession of another stolen vehicle. He remained in custody from March 20, 2017 to April 29, 2017.

### **II. Procedural background**

On May 11, 2017, a felony complaint for arrest warrant was filed. The warrant was issued on May 18, 2017 and entered on May 24, 2017. It is unclear whether the defendant was arrested on the warrant or voluntarily surrendered in court.

On May 31, 2017, the defendant was arraigned and entered a plea of not guilty. He was remanded and bail was set at \$215,000.

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<sup>1</sup> The defendant was also ordered to serve a concurrent term of four years state prison in case SA095761 from which he does not appeal.

The defendant remained in custody<sup>2</sup> until August 10, 2017,<sup>3</sup> when he, with the assistance of counsel, withdrew his not guilty plea and entered a plea of nolo contendere, executing both written and oral waivers. The defendant waived time and was sentenced forthwith as indicated above. He was awarded 104 actual days of custody credit plus an additional 104 days of credit pursuant to Penal Code section 4019 for a total of 208 days of presentence credit.

On September 29, 2017, the defendant timely filed a notice of appeal.

On March 2, 2018, court-appointed counsel for defendant filed an opening brief and requested the court to conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. On the same day, the clerk of this court advised the defendant that he had 30 days to submit by brief or letter any contentions or argument he wished this court to consider. No response has been received to date.

On April 13, 2018, this court sent a letter to the defendant's counsel and the Attorney General pursuant to Government Code section 68081, asking for their respective positions regarding the correct number of presentence custody credits to which defendant was entitled at the time of sentencing.

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<sup>2</sup> The reporter's transcript shows the defendant out of custody on June 14, 2017 while the minute order shows the defendant in custody on that and every other court date with bail set at \$215,000.

<sup>3</sup> The reporter's transcript of the sentencing hearing shows the date of October 10, 2017, likely in error since the next court date set during the hearing was October 4, 2017.

On April 17, 2018, both sides responded by letter, waiving further argument.

### **DISCUSSION**

The defendant argues that he should have been awarded an additional 16 days of actual custody credit plus 16 days of goodtime/worktime credit for a total of 32 additional days of presentence custody credit. This number is based on the sum of the period between a March 20, 2017 arrest and April 29, 2017 release reflected in the probation officer's report, and the period between the May 24, 2017 issuance of the arrest warrant and August 10, 2017 plea and sentence.

The Attorney General argues that the lack of clarity in the record and multiple inconsistencies in the reporter's transcript, minutes, and probation report necessitate a remand to the trial court for clarification. The point is well taken. As indicated above, the reporter's transcript shows defendant to be out of custody on June 14, 2017, while the minutes show defendant to be in custody on that day. Similarly, according to the reporter's transcript, defendant was sentenced on October 10, 2017, while the minutes indicate that sentencing occurred on August 10, 2017. Additionally, the cover page of the probation report has defendant arrested on March 20, 2017 and released on April 29, 2017, incorrectly calculating that period as 32 days, rather than the 41 days revealed upon consultation with a calendar. On a subsequent page in the same report, the *arrest* date is listed as April 29, 2017.

Further complicating matters is the information contained in the probation report that shows defendant to have had multiple open and post conviction cases and warrants during the time that he was in custody on this case, requiring the trial court

to determine which of those presentence custody credit days applied to this case were not already applied to defendant's myriad other cases.

These discrepancies in the record can only be resolved by the trial court.

### **DISPOSITION**

The matter is remanded with direction to resolve any conflicts in the record so that the correct number of presentence custody credits may be awarded to the defendant's sentence. The judgment of conviction is otherwise affirmed.

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DHANIDINA, J.\*

We concur:

EDMON, P. J.

LAVIN, J.

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