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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.

BYRON T. CRAVER,

Defendant and Appellant.

B254022

(Los Angeles County  
Super. Ct. No. VA122885)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Modified and, as so modified, affirmed.

Marta I. Stanton, 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, Chung Mar and Jessica C. Owen, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Byron T. Craver appeals from the judgment entered following a jury trial that resulted in his convictions for attempted murder and four counts of assault with a firearm. Craver contends the trial court miscalculated his custody credits. The People concede the point, and we agree. We order the judgment modified accordingly, and otherwise affirm.

### PROCEDURAL BACKGROUND

On September 22, 2011, appellant Craver, a gang member, fired five or six shots at a rival gang member, and hit three innocent bystanders.<sup>1</sup> A jury found Craver guilty of one count of willful, deliberate, and premeditated attempted murder (Pen. Code, §§ 664, 187, subd. (a))<sup>2</sup> and four counts of assault with a firearm (§ 245, subd. (a)(2)), a lesser included offense of attempted murder. It further found Craver personally used and intentionally discharged a firearm in commission of the attempted murder (§ 12022.53, subds. (b), (c)); personally and intentionally used a firearm in each of the assaults (§ 12022.5, subd. (a)); personally inflicted great bodily injury on three of the assault victims (§ 12022.7); and committed all the offenses for the benefit of, at the direction of, and in association with, a criminal street gang (§ 186.22, subd. (b)(1)).

Craver admitted suffering a prior conviction for carjacking (§ 215, subd. (a)), a serious and violent felony (§§ 667, subds. (a), (b)-(i), 1170.12, subds. (a)-(d)). The trial court sentenced Craver to a term of 39 years to life in prison. It imposed a restitution fine, a suspended parole restitution fine, a criminal conviction assessment, and a court operations assessment. The court awarded Craver 693 days of actual custody credit and no presentence conduct credit. Craver appeals.

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<sup>1</sup> Because the evidentiary details are not necessary to resolution of the issues presented on appeal, we do not recite them here.

<sup>2</sup> All further undesignated statutory references are to the Penal Code.

## DISCUSSION

### 1. *Correction of actual custody credit.*

Craver contends he is entitled to one additional day of actual custody credit, and the People agree. A defendant is entitled to actual custody credit for all days spent in custody in county jail. (§ 2900.5, subd. (a); *People v. Denman* (2013) 218 Cal.App.4th 800, 814; *People v. Smith* (1989) 211 Cal.App.3d 523, 526; *People v. Johnson* (2010) 183 Cal.App.4th 253, 289.) “Calculation of custody credit begins on the day of arrest and continues through the day of sentencing.” (*Denman*, at p. 814; *People v. Bravo* (1990) 219 Cal.App.3d 729, 735.) Craver was arrested on December 16, 2011,<sup>3</sup> and sentenced on November 8, 2013. Calculated from his arrest until the date of sentencing, appellant’s period of actual presentence custody totals 694 days, not the 693 days the trial court awarded.

### 2. *Correction of presentence conduct credit.*

For reasons that do not appear in the record, the trial court did not award Craver any presentence conduct credit. Craver contends, and the People agree, that he should have been awarded 104 days of presentence conduct credit. The parties are correct. Section 2933.2 prohibits persons convicted of murder from accruing any presentence conduct or worktime credit. (*People v. Chism* (2014) 58 Cal.4th 1266, 1336.) However, Craver was convicted of attempted murder, not murder. By its plain language, section 2933.2 does not apply. (Cf. *People v. Marinelli* (2014) 225 Cal.App.4th 1, 5-6; *People v. Lewis* (2006) 146 Cal.App.4th 294, 298.) Section 2933.1, subdivision (a), provides that “any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit.” Attempted murder is one of the offenses listed in section 667.5, subdivision (c). (§ 667.5, subd. (c)(12).)

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<sup>3</sup> The probation report states Craver was arrested on October 2, 2011. However, the report also suggests Craver was arrested on December 16, 2011. The parties agree the latter is the correct date.

Therefore, Craver was entitled to accrue presentence conduct credit at the 15 percent rate, for a total of 104 days.

We order the judgment modified accordingly. (*People v. Taylor* (2004) 119 Cal.App.4th 628, 647 [a sentence that fails to award legally mandated custody credit is unauthorized and may be corrected when discovered]; *People v. Flores* (2009) 176 Cal.App.4th 1171, 1182; *People v. Duran* (1998) 67 Cal.App.4th 267, 270.)

## **DISPOSITION**

The clerk of the superior court is directed to correct the abstract of judgment to reflect actual custody credits of 694 days and presentence conduct credits of 104 days, for a total of 798 days. The clerk is directed to forward the modified abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

EDMON, 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.