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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.

NICHOLAS HARRY GRUNITZKY,

Defendant and Appellant.

B232403

(Los Angeles County
Super. Ct. No. BA372648)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara R. Johnson, Judge. Affirmed as modified.

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, Lawrence M. Daniels and Eric E. Reynolds, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant, Nicholas Harry Grunitzky, of first degree residential burglary in violation of Penal Code¹ section 459. Defendant admitted that allegations in the information concerning prior convictions and prison terms were true. (§§ 667, subds. (a)(1), (b)-(i), 667.5, subd. (b), 1170.12.) The trial court struck one of the sections 667, subdivisions (b) through (i) and 1170.12 findings and the prior separate prison term enhancement. Defendant was sentenced to 13 years in state prison. We modify the judgment and affirm.

We appointed counsel to represent defendant on appeal. After examination of the record, counsel filed an “Opening Brief” in which no issues were raised. Instead, appointed counsel requested we independently review the entire record on appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On January 19, 2012, we advised defendant that he had 30 days within which to personally submit any contentions or arguments he wishes us to consider. No response has been received.

The trial court gave defendant credit for 265 days in presentence custody. We asked the parties to brief the question whether defendant received one day too many presentence custody credits. Defendant was arrested on June 17, 2010, and sentenced on March 7, 2011. Therefore, he was in actual presentence custody for 264 days, not 265 days. He was entitled to credit for 264 days actual presentence custody and 132 days of conduct credit for a total presentence custody credit of 396 days. (*In re Marquez* (2003) 30 Cal.4th 14, 25-26; *People v. Smith* (1989) 211 Cal.App.3d 523, 527.) The judgment must be modified and the abstract of judgment amended to so provide.

The trial court orally imposed a \$10 local crime prevention programs fine (§ 1202.5, subd. (a)) plus \$28 in penalty assessments. The abstract of judgment reflects, among other penalties, a \$9 emergency medical services penalty under Government Code section 76000.5, subdivision (a)(1), and no county penalty pursuant to Government Code section 76000, subdivision (a)(1). However, the local crime prevention programs fine

¹ All further statutory references are to the Penal Code except where otherwise noted.

was subject to only \$26 in penalties and a surcharge as follows: a \$10 section 1464, subdivision (a)(1) state penalty; a \$7 Government Code section 76000, subdivision (a)(1) county penalty; a \$2 section 1465.7, subdivision (a) state surcharge; a \$2 Government Code section 76000.5, subdivision (a)(1) emergency medical services penalty; a \$3 Government Code section 70372, subdivision (a)(1) state court construction penalty; a \$1 Government Code section 76104.6, subdivision (a)(1) deoxyribonucleic acid penalty; and a \$1 Government Code section 76104.7, subdivision (a) state-only deoxyribonucleic acid penalty. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1373-1374; *People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1528–1530.) The judgment must be modified and the abstract of judgment amended to so provide.

The judgment is modified to award defendant credit for 264 days in presentence custody plus 132 days of conduct credit for a total presentence custody credit of 396 days. And the judgment is modified to impose \$26 in penalties and a surcharge on the \$10 Penal Code section 1202.5, subdivision (a) local crime prevention programs fine as specified above. The judgment is affirmed in all other respects. Upon remittitur issuance, the clerk of the superior court is to prepare an amended abstract of judgment and deliver a copy to the Department of Corrections and Rehabilitation.

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TURNER, P.J.

We concur:

ARMSTRONG, J.

KRIEGLER, J.