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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL EDUARDO TORRES,

Defendant and Appellant.

B280075, B280076

(Los Angeles County
Super. Ct. Nos. MA061092,
MA060809)

APPEAL from a judgment of the Superior Court of Los Angeles County, Frank M. Tavelman, Judge. Affirmed; remanded with directions.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Jonathan M. Krauss and Timothy L. O'Hair, Deputy Attorneys General, for Plaintiff and Respondent.

Miguel Eduardo Torres pled guilty in two cases to one count of possession for sale of methamphetamine and six counts of identifying information theft with a prior. The trial court imposed sentences of imprisonment for each of the counts, but suspended execution of the sentence in favor of probation. After Torres violated his probation, the trial court imposed execution of the suspended sentences. Torres appealed the trial court's judgment.

We affirm. But based on errors in the abstracts of judgment, we remand the case to the trial court with directions to correct the abstracts of judgment.

BACKGROUND

On October 17, 2013, the People filed an information in case No. MA060809 (the 809 case) alleging nine counts against Torres; seven counts were for identity theft under Penal Code section 530.5, subdivision (a),¹ one count alleged grand theft of personal property under section 487, subdivision (a), and one count alleged possession for sale of methamphetamine under Health and Safety Code section 11378. The information also alleged under section 667.5 that Torres had suffered three prior convictions.

On January 21, 2014, the People filed an amended information in case No. MA061092 (the 092 case) alleging 11 counts against Torres; one count of conspiracy to defraud another of property under section 182, subdivision (a)(4) and 10 counts of identifying information theft with a prior under section 530.5,

¹ All statutory references are to the Penal Code unless otherwise specified.

subdivision (c)(2).² The information also alleged under section 667.5 that Torres had suffered three prior convictions.

On March 21, 2014, Torres pled no contest to the possession for sale of methamphetamine count in the 809 case and to six of the identifying information theft counts in the 092 case. The trial court sentenced Torres to three years in county jail for the possession count in the 809 case and eight months each in state prison on the six identifying information theft counts in the 092 case for a total of seven years incarceration and awarded credit of 162 actual days and 162 good time/work time days. The trial court suspended execution of the sentences and placed Torres on five years felony probation and, as conditions of his probation, ordered Torres, among other things, to serve 324 days (the days for which he was credited) in county jail and to participate in a drug abuse rehabilitation program as directed by his probation officer.

Torres was arrested on May 13, 2016 on unrelated charges. After his arrest, the Los Angeles County Probation Department issued a probation hold and Torres was held pending a probation violation hearing.

On December 23, 2016, the trial court found that Torres had violated his probation and imposed execution of the previously suspended sentences in both the 092 and 809 cases. The trial court awarded on the 809 case 324 back time credits (the credits the trial court awarded on March 21, 2014 at Torres's original sentencing hearing), 245 custody credits, and 245 good time/work time credits, for a total of 814 credits.

² The section 530.5, subdivision (c)(2) counts in the 092 case were based on some of the same incidents as the section 530.5, subdivision (a) counts in the 809 case.

Torres timely appealed both the 809 and 092 cases. On April 18, 2017, we appointed counsel to represent Torres on appeal. Torres moved to consolidate the appeals, and on June 23, 2017, we granted that motion. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) On October 17, 2017, we sent letters to Torres and appointed counsel directing counsel to forward the appellate record to Torres and advising him that within 30 days he could personally submit any contentions or issues he wished us to consider. We received no response from Torres.

On December 14, 2017, we sent a letter to counsel for Torres and the People requesting briefing on five questions:

“(1) Did the trial court apply the same sentencing credits to each of the two separate cases . . . contrary to . . . section 2900.5, subdivision (b)?

“(2) If so, did application of the sentencing credits to each of the two separate cases constitute error?

“(3) Did the trial court correctly calculate sentencing credits pursuant to . . . section 4019?

“(4) Was the trial court authorized to sentence [Torres] to state prison for violations of . . . section 530.5, subdivision (c)(2)?

“(5) If the original sentence was unauthorized in any respect, may we correct the sentence on appeal from the execution of the suspended sentence upon termination of probation?”

It appears from our docket that after we requested supplemental briefing, counsel requested that the trial court forward to this court the trial court files from each of the two cases on appeal. We have received and reviewed those files.

DISCUSSION

I. Application of sentencing credits

Section 2900.5, subdivision (b) provides: “For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.”

The abstracts of judgment on the two cases each reflect 814 days of credit. It is clear from the reporter’s transcript, however, that the trial court intended that the sentencing credits be applied only once.

“When there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls.” (*People v. Walz* (2008) 160 Cal.App.4th 1364, 1367, fn. 3.) We will, therefore, order the trial court to correct the discrepancy between the trial court’s sentence and the abstract of judgment by preparing an amended abstract of judgment omitting the sentencing credits mistakenly included in the abstract of judgment for the 092 case. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 187-188.)

II. Calculation of sentencing credits

Both Torres and the People contend the trial court miscalculated Torres’s sentencing credits under section 4019. The trial court awarded a total of 814 credits to Torres, including 569 for time served (including the 162 time served and 162 conduct credits the trial court initially granted when imposing and suspending Torres’s sentence in favor of probation), 245 days of actual custody (miscalculated from May 13, 2016 to December 23, 2016), and 245 days of conduct credit based on the actual

custody miscalculation. The People contend, and we agree, that if the custody credits are properly calculated with 324 days of back time, 225 days of actual custody, and 224 days of conduct credit, Torres was entitled to 773 total days of credit. (See § 4019, subd. (f); *People v. Whitaker* (2015) 238 Cal.App.4th 1354, 1358.)

Torres contends he is also entitled to 22 days of credit for an arrest on September 12, 2013 and 17 days for flash incarcerations beginning on June 12, 2014 and September 9, 2014.³ The record does not disclose whether or how long Torres remained in custody after his September 12, 2013 arrest. And section 4019, subdivision (i)(1) provides that section 4019 “shall not apply, and no credits may be eared, for periods of flash incarceration imposed pursuant to Section . . . 3454,” which includes both of the flash incarcerations Torres referenced in his calculations. Torres is, therefore, not entitled to the additional credits he claims.

We will order the trial court to correct the abstract of judgment in the 809 case to reflect that Torres was entitled to 773 credits.

III. Unauthorized sentence

Torres pled guilty to six counts of identifying information theft with a prior under section 530.5, subdivision (c)(2). The trial court sentenced Torres to six eight-month terms in state prison for those violations.

³ As used in this context, “ ‘flash incarceration’ is a period of detention in a city or county jail due to a violation of an offender’s conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days.” (§ 3454, subd. (c).)

Section 530.5, subdivision (c)(2) provides: “Every person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and who has previously been convicted of a violation of this section, upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170.” With certain exceptions that do not apply here, section 1170, subdivision (h) also provides for imprisonment in county jail. We therefore requested briefing regarding whether a state prison commitment on these counts was an authorized sentence.

After we requested briefing, one of the parties requested that the trial court’s files in the underlying matters be sent to the Court of Appeal. Both parties have now pointed out that after the notice of appeal was filed and the record on appeal was settled, the Department of Corrections and Rehabilitation contacted the trial court and requested that it correct its orders to reflect that Torres should be committed to county jail. On May 3, 2017, the trial court filed an amended commitment order superseding its December 23, 2016 order and noting that Torres was to serve all of his sentence in county jail.

“A case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief.” (*People v. Dunley* (2016) 247 Cal.App.4th 1438, 1445.) The trial court’s nunc pro tunc correction of its own commitment order has rendered this question moot.

DISPOSITION

We affirm the trial court's judgment. The trial court is directed to: (1) correct the abstract of judgment in No. MA060809 to reflect a total of 773 credits (324 days of back time, 225 days of custody credits, and 224 days of conduct credits); (2) correct the abstract of judgment in No. MA061092 to omit any sentencing credits; and (3) forward certified copies of the corrected abstracts of judgment to the Los Angeles County Sheriff's Department.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

BENDIX, J.