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REPORTS**

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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.

REUBEN KENNETH LUJAN,

Defendant and Appellant.

B276568

(Los Angeles County
Super. Ct. No. BA172982)

Appeal from a judgment of the Superior Court of Los Angeles County, Larry Paul Fidler, Judge. Affirmed as modified with directions.

Tracy J. Dressner, 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, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Reuben Kenneth Lujan was convicted in 2000 by a jury, Judge James M. Ideman presiding, of two counts of first degree murder (Pen. Code,¹ § 187, subd. (a)) and one count of stalking (§ 646.9, subd. (a)). He was also found to have personally used a deadly weapon during the commission of both murders (§ 12022, subd. (b)(1)) and special circumstance allegations of intentional killing while lying in wait and conviction of multiple murders (§ 190.2, subd. (a)(3), (15).) The judgment was affirmed by this court in an opinion certified for partial publication. (*People v. Lujan* (2001) 92 Cal.App.4th 1389, 1416.) Our Supreme Court denied review. (*People v. Lujan* (Jan. 29, 2002, S102685).) Federal habeas corpus proceedings followed.²

¹ Further statutory references are to the Penal Code unless otherwise noted.

² Defendant's February 7, 2017 motion to augment the record on appeal to include federal court documents is denied. Defendant has not shown those records were before the trial court when he was resentenced. (Cal. Rules of Court, rule 8.155 (a)(1)(A); *People v. Brooks* (1980) 26 Cal.3d 471, 484 ["Augmentation is not available . . . for the purpose

Recently, this case was remanded from the United States District Court for the Central District of California with directions to retry defendant for first degree murder or reduce his offenses to second degree murder. The prosecution declined to retry defendant. On July 29, 2016, Judge Larry P. Fidler resentenced defendant on two counts of second degree murder with personal deadly weapon use and stalking. This appeal followed.

II. DISCUSSION

The Attorney General does not dispute defendant's position on appeal that the abstract of judgment should be corrected and we agree. The August 11, 2016 abstract of judgment does not accurately reflect what took place on the day of the July 29, 2016 sentencing hearing. Further, the July 29, 2016 judgment must be modified to credit defendant with 6,558 days in actual custody from his August 16, 1998 arrest to his July 29, 2016 resentencing. (*People v. Buckhalter* (2001) 26 Cal.4th 20, 23, 29, 37, 41.)

of adding material that was not a proper part of the record in the trial court"]; accord, *People v. Jones* (1997) 15 Cal.4th 119, 171, fn. 17, overruled on another point in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1.) Further, defendant has not shown how the federal court material may be of any use to him on appeal. (*People v. Ghent* (1987) 43 Cal.3d 739, 780; *People v. Silva* (1978) 20 Cal.3d 489, 492-493.)

III. DISPOSITION

The judgment is modified to include credit for 6,558 days in actual custody. As modified, the judgment is affirmed. On remand, the superior court clerk is to prepare an amended abstract of judgment that correctly reflects the July 29, 2016 sentence as modified to include credit for 6,558 days in actual custody as well as (1) the sentencing date of July 29, 2016; (2) the name of the sentencing judge, Judge Larry P. Fidler; (3) the name of counsel for the People, Mary Murray; (4) the name of the court reporter, Dianna Crittenden; and (5) the reduction of the crimes from first degree murder to second degree murder. The superior court clerk is to deliver a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation, as well as to defendant's appellate counsel, Tracy J. Dressner.

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LANDIN, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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