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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. KAYCEE WHITESHOE PLOURDE, Defendant and Appellant.	B296185 (Los Angeles County Super. Ct. No. BA450424)

APPEAL from a judgment of the Superior Court of Los Angeles County, David V. Herriford, Judge. Affirmed.

Linda L. Gordon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Following a no contest plea, defendant Kaycee Whiteshoe Plourde was convicted of driving under the influence of alcohol (Veh. Code, § 23153, subd. (a); count 1) and driving with a .08 percent blood alcohol level causing bodily injury (*id*., subd. (b); count 2). The trial court found true the allegations Plourde inflicted great bodily injury in the commission of the offenses (Pen. Code, § 12022.7, subd. (a)). The court sentenced Plourde to the mid-term of two years on count 1 plus three years for the great bodily injury enhancement. It stayed sentence on count 2 (*id*., § 654). It gave her two days of presentence custody credit for actual time served.

Plourde filed a notice of appeal and request for a certificate of probable cause, based on the trial court's failure to grant her custody credits for the time she spent in a residential treatment program as a condition of her release. The trial court granted her request for a certificate of probable cause. We affirm.

BACKGROUND

At about 3:10 p.m. on September 19, 2016, Plourde drove her car through a red light at the intersection of Hollywood Boulevard and Las Palmas Avenue, hitting Megan Gaver's car that was in the intersection. Plourde did not stop but continued driving. Gaver's arm and back were injured in the collision.

Less than a block later, Plourde's car jumped the curb and hit Jessica Tubergan and her mother, Cyndi Ransom, who were walking on the sidewalk. Tubergan received bruises and a deep laceration on her ankle, which required stitches to close. Ransom received facial lacerations, chipped teeth, a deep wound on her knee requiring stitches to close, and other injuries; she was hospitalized for four days.

The police spoke to Plourde, who stated: "I didn't mean to hit the lady. I took the turn to[o] wide and instead of hitting the brakes I hit the gas. I just got my car out of the body shop and the brakes felt really weird." Plourde failed field sobriety tests and told an officer that she felt buzzed. The officer administered breath tests at 4:26 and 4:29 p.m. They reflected blood alcohol levels of .18 and .20 percent.

By information filed on March 24, 2017, Plourde was charged with driving under the influence of alcohol causing injury to Ransom, and driving with a .08 percent blood alcohol content causing injury to Ransom. As to the latter count, the information alleged Plourde caused bodily injury to more than one victim, subjecting her to additional punishment under Vehicle Code section 23558; she had a blood alcohol content over .15 percent, subjecting her to additional punishment under Vehicle Code section 23578. The information further alleged that Plourde personally inflicted great bodily injury on Tubergan, causing the offense to become a serious felony (Pen. Code, §§ 1192.7, subd. (c)(8), 12022.7, subd. (a)).

Plourde was on three years' formal probation at the time in case No. BA420359 following conviction of the transportation or sale of a controlled substance (Health & Saf. Code, § 11352, subd. (a)).[1] A probation violation hearing was scheduled in that case.

At a hearing on July 7, 2017, Plourde's counsel noted that Plourde was currently living in the Dare U To Care Outreach

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[1] Plourde was also on three years' summary probation for a misdemeanor disorderly conduct conviction (Pen. Code, § 647, subd. (b)).

Ministries live-in program (Dare To Care). Counsel requested that the court order her to stay in that program as a condition of release on bail; the court agreed to do so.

The case was continued a number of times. On September 14, 2017, the court noted the People had offered a plea deal of five years on the new charges, which would "include the probation [violation]." The court ordered Plourde to continue in Dare To Care as a condition of release on her own recognizance.

On October 25, 2017, the court noted that the defense was requesting an open plea, with the sentencing hearing to be continued. The court stated: "The People's offer is five years. I indicated to you that I would not impose anything more than that. I would certainly listen to whatever you want to present and consider[ ] something else. In addition, we talked about having [Plourde] finish the program that she's a resident of right now, which I'll go along with that with the condition that [Plourde] use [an electronic monitoring] bracelet starting as soon as that can be done. If there's any violation, then that is terminated. I certainly will take into consideration her performance in the program when she comes back."

Defense counsel stated that he had told Plourde "the court would probably give her credit" for her time in the program. The court responded: "I can't give her credit for it, but I will certainly take that into consideration in imposing the final sentence."

The prosecutor then explained to Plourde that the maximum sentence she was facing was 10 years, but she would not receive that amount of time if she entered a plea. Plourde then waived her trial rights. She entered an open plea of no contest to both counts, admitted the allegations, and admitted the probation violation. The court accepted Plourde's plea and

admission; it found her guilty of the charges and found true the additional allegations. It also found her to be in violation of probation and revoked her probation. The court released her on her own recognizance pending sentencing conditioned on her installing an electronic monitoring bracelet, submitting to alcohol testing, and not consuming alcohol or other controlled substances. Thereafter, the court continued the sentencing hearing, ordering Plourde to remain in the Dare To Care program.

At the January 11, 2019 sentencing hearing, the court found in aggravation that Plourde had a prior conviction of driving under the influence, and her blood alcohol level was over .15 percent at the time of the offenses. In mitigation, it found that Plourde completed the Dare To Care program and paid restitution to the victims. Defense counsel also provided the court with evidence Plourde was attending college and doing charitable work, and letters of recommendation.

Defense counsel again raised the issue of Plourde receiving credit for being in the Dare To Care program. The court asked how she could legally get credit, since participating in the program allowed Plourde to remain out of jail for a year-and-a-half. Counsel then argued for leniency, based on Plourde's having "changed her life around."

The trial court found probation was not appropriate based on the aggravating factors that it had mentioned "and given the facts and circumstances of the incident involving two separate collisions injuring three people severely, with an elevated blood alcohol level." It denied probation and sentenced Plourde to five years in state prison. It gave her two days of presentence custody credit.

Defense counsel again requested that Plourde be given credit for the time spent in the Dare To Care program pursuant to Penal Code section 2900.5. When the court declined the request, counsel argued that the court previously indicated that it "would take that into serious consideration into her sentencing, and it doesn't appear that the court has at all. It hasn't given her any credit for anything that she's done here to improve herself." The court disagreed with counsel's assessment and reminded counsel that it was required to follow the sentencing rules and had to impose a legal sentence.

Plourde timely filed her notice of appeal and request for a certificate of probable cause, based on the trial court's failure to award her custody credits under Penal Code section 2900.5 for the time spent in the Dare To Care program.

DISCUSSION

We appointed counsel to represent Plourde on this appeal. After review of the record, Plourde's counsel filed an opening brief requesting this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. On November 15, 2019, we sent a letter to Plourde, advising her that she had 30 days within which to personally submit any contentions or issues which she wished us to consider. We received no response.[2]

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[2] Also on November 15, 2019, we received a copy of an ex parte motion to correct custody credits, which Plourde's appellate counsel filed in the trial court. The motion again argued that under Penal Code section 2900.5, subdivision (a), Plourde was entitled to presentence custody credit for time spent in the Dare To Care program.

We have examined the entire record. We are satisfied that no arguable legal issues exist and that Plourde's counsel has fully complied with her responsibilities.

Penal Code section 2900.5, subdivision (a), provides presentence custody credit for time spent in custody, including time spent in a rehabilitation facility or similar residential institution. It applies "only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted." (*Id.*, subd. (b).)

A defendant is entitled to credit under Penal Code section 2900.5 if she is released from jail on the condition that she remain in a custodial setting. (*People v. Darnell* (1990) 224 Cal.App.3d 806, 809.) However, "[a] defendant is not entitled to credit for presentence confinement unless [s]he shows that the conduct which led to [her] conviction was the sole reason for [her] loss of liberty during the presentence period." (*People v. Johnson* (2007) 150 Cal.App.4th 1467, 1485; see also *People v. Torres* (2012) 212 Cal.App.4th 440, 445-446.)

Plourde made no showing below that the Dare To Care live-in program in which she was participating qualified as "custodial time in a residential treatment facility." (*People v. Thurman* (2005) 125 Cal.App.4th 1453, 1460; accord, *People v. Darnell*, *supra*, 224 Cal.App.3d at p. 809.) Additionally, nothing in the record shows that Plourde's pretrial time in Dare To Care was solely due to the charges filed against her in the instant case, rather than her probation in case No. BA420359. Absent the requisite showings, the trial court did not err in denying

Plourde's request for presentence custody credit for time spent in Dare To Care.[3]

By virtue of counsel's compliance with the *Wende* procedure and our review of the record, we are satisfied that Plourde received adequate and effective appellate review of the judgment entered against her in this case. (*People v. Wende*, *supra*, 25 Cal.3d at p. 441; accord, *People v. Kelly* (2006) 40 Cal.4th 106, 109-110.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.

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[3] As noted in footnote 2, *ante*, Plourde made a motion in the trial court to correct her presentence custody credits. If she is able to show that her release on bail and on her own recognizance to Dare To Care was in a custodial setting and based solely on the charges in the instant case, she would be entitled to presentence custody credits. (*People v. Darnell*, *supra*, 224 Cal.App.3d at p. 809.)