

1 ATTORNEY NAME
STATE BAR NO.
2 ADDRESS
PHONE NO.
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4 ATTORNEY FOR DEFENDANT _____

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA

6 COUNTY OF _____

7
8 THE PEOPLE OF THE STATE OF
9 CALIFORNIA,
10 Plaintiff,
11 vs.
12
13 Defendant.

Superior Court

No.

Appeal

No.

14
15 **MOTION TO CORRECT CALCULATION**
16 **OF PRESENTENCE CUSTODY CREDITS**

17 For the reasons set out in the following memorandum of points and
18 authorities, defendant _____ moves pursuant to Penal Code section
19 1237.1 for correction of his presentence custody credits.

20
21 Dated: _____

Respectfully submitted,

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23 _____
Attorney for Defendant
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Jurisdiction.**

3 The trial court has jurisdiction to correct errors in the calculation of
4 presentence custody credits while the judgment is on appeal. (Pen. Code, § 1237.1;
5 *People v. Acosta* (1996) 48 Cal.App.4th 411.)

6 **B. Defendant is entitled to 34 additional days of actual credit for time
7 served in a Salvation Army drug treatment program, which this court
8 awarded at a previous probation hearing on July 3, 2007, but
inadvertently omitted from the total at the most recent probation
hearing on December 4, 2008.**

9 In this case, defendant pled guilty to possessing cocaine and ultimately was
10 granted formal probation with terms including 365 days jail custody. The most
11 recent probation/sentencing hearing was on December 4, 2008. This court
12 calculated defendant’s actual custody credits at 114 days, with Penal Code section
13 4019 credits of 56 days, for a total of 170 days. (See Sentencing Minutes 12/4/08,
14 attached as Exhibit A, and Reporter’s Transcript of Sentencing 12/4/08, attached as
15 Exhibit B [p. 49].)

16 In making this calculation, the court omitted 34 days actual custody credits
17 for time spent in a Salvation Army narcotics treatment facility previously served as
18 a condition of probation in the same case. At a previous sentencing hearing, on
19 July 3, 2007, defendant requested, and the court granted, 34 days actual credit for
20 time in the Salvation Army narcotics program. (See Reporter’s Transcript 7/3/07
21 [pp. 37, 40], attached as Exhibit C, and Probation Report 7/3/07 credits summary,
22 attached as Exhibit D.) The court correctly awarded only actual custody credits,
23 and not work time/good time credits, for the Salvation Army custody. (See Pen.
24 Code, § 2900.5 [actual custody credits awarded for custody including “halfway
25 house [or] rehabilitation facility”]; *People v. Darnell* (1990) 224 Cal.App.3d 806,
26 809 [Pen. Code, § 2900.5 credits awarded for time in residential rehabilitation

1 facility]; Pen. Code, § 4019 [good time/work time credits limited to custody in jail,
2 industrial farm or road camp].)

3 The 34 days for Salvation Army custody awarded on July 3, 2007, were
4 omitted from the calculation at the most recent sentencing. The genesis of the error
5 appears to be a supplemental probation report prepared for a sentencing hearing on
6 August 20, 2007, where the court modified probation and released defendant. That
7 probation report contains a credits summary listing only jail custody and omitting
8 the previously awarded Salvation Army custody. This is evident both from the
9 omission of any reference to the 34 Salvation Army days and from the fact that
10 good time/work time credits of 52 days were awarded for the entire 106-day total of
11 actual jail custody. (See Probation Report credit summary for 8/20/07 hearing,
12 attached as Exhibit E.)

13 This omission from the probation report was apparently carried over at the
14 most recent sentencing on December 4, 2008. On that date, the court continued
15 probation, with terms including 365 days jail custody, and remanded defendant to
16 the custody of the Sheriff. (See Exhibits A and B.) In calculating presentence
17 custody credits, the court included only jail credits, consisting of the 114 actual
18 days, plus 56 good time/work time credits, for a total of 170 days.

19 Defendant is entitled to actual credits for the previously awarded 34 days for
20 Salvation Army custody, which would bring his credits total to 204 days.

21 **C. Defendant is entitled to 2 additional days of actual credit for custody on**
22 **July 3 and 4, 2007, which were omitted from the calculation of credits.**

23 The calculation of defendant's presentence jail custody includes a period of
24 77 days jail custody from June 5, 2007 to August 8, 2007. (See Exhibit E.)
25 However, the record establishes defendant was remanded to the custody of the
26 Sheriff on June 3, not June 5, 2007. (See Minutes of Sentencing 7/3/07, attached as
27 Exhibit F, and Reporter's Transcript of 7/3/07 [p. 40], attached as Exhibit C.)
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1 A defendant is entitled to actual custody credit under section 2900.5 for the
2 entire period of custody, including the initial day of arrest or confinement. (*People*
3 *v. Smith* (1989) 211 Cal.App.3d 523, 524.) Accordingly, defendant is entitled to an
4 additional two days of actual presentence custody credit for June 3 and 4, plus
5 additional good time/work time credit. This would bring defendant's credits total
6 to 208 days, consisting of: 116 actual days jail custody; plus 58 days good
7 time/work time credit for that period; plus 34 days actual Salvation Army custody
8 (with no good time/work time credit for the Salvation Army custody).

9 **D. Conclusion.**

10 As detailed above, defendant is entitled to a total of 208 days presentence
11 custody credit, which is 38 days more than the calculation on December 4, 2008.
12 Defendant asks that the calculation be corrected by preparing a new minute order
13 with the revised credits total and forwarding it to the Sheriff's Department and to
14 defendant's appellate counsel, _____. Please note that prompt correction
15 by the trial court will make it unnecessary for defendant to raise this claim on
16 appeal. (See Pen. Code, § 1237.1; *People v. Acosta, supra*, 48 Cal.App.4th 411.)

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18 Dated: _____

Respectfully submitted,

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Attorney for Defendant

ATTACH PROOF OF SERVICE

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