

RESOLUTION 4-6-03

DIGEST

Appeals: Use of Informal Motion to Correct Presentence Credits

Amends Penal Code section 1237.1 to require “presenting a claim” rather than filing a postsentence motion for correction of presentence credits prior to filing an appeal.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Penal Code section 1237.1 to require “presenting a claim” rather than filing a postsentence motion for correction of presentence credits prior to filing an appeal. This resolution should be disapproved because it would insert a vague standard into the statute and because more practical solutions to the perceived problem already exist.

Under Penal Code section 4019, a person convicted of a crime is entitled to certain presentence custody credits. This calculation is done at the time of sentencing and is subject to mathematical error. In 1993, the Court of Appeal complained that appeals solely for this mathematical correction were a waste of time and resources. (*People v. Fares* (1993) 16 Cal.App.4th 954, 957-960.) In 1965, the Legislature responded by adding Penal Code section 1237.1 barring an appeal unless the defendant first “presents the claim” at the time of sentencing or “makes a motion” postsentencing. (Stats. 1995, ch. 18, § 2.) Case law later determined that section 1237.1 only applies when the section 4019 credit is the sole issue on appeal. (*People v. Acosta* (1996) 48 Cal.App.4th 411, 427-428.)

This resolution would eliminate the requirement of a formal motion, and would require only that a postsentencing defendant “present a claim” in the trial court before filing an appeal. The rationale is that appellate counsel may reside far from the trial court and it is inefficient to have counsel flying all over the state to appear at these motions. Currently, however, appellate counsel can avoid an appearance by either (1) requesting correction by letter to the trial court or, if that is unsuccessful, (2) filing an ex parte motion. If the trial court fails to respond to the ex parte motion, defendant is free to appeal. This procedure has been sanctioned by case law. (*People v. Clavel* (2002) 103 Cal.App.4th 516, 519, fn. 4.) This resolution replaces the known procedure of filing a motion with that of “presenting” a postsentence claim, a procedure undefined in California law. At a minimum, the Rules of Court would have to be amended to define the procedural requirements such as number of copies, filing and service requirements and opportunities for opposition.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1237.1 to read as follows:

1 §1237.1

2 No appeal shall be taken by the defendant from a judgment of conviction on the ground of an
3 error in the calculation of presentence custody credits, unless the defendant first presents the claim in
4 the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the
5 defendant first ~~makes a motion~~ presents the claim for correction of the record in the trial court. If the
6 claim is presented after sentencing, the defendant shall serve all parties and the appellate court, if an

7 appeal is pending, with a copy of the letter presenting the claim.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing law: Requires the defendant make a formal motion in the trial court to correct a custody credit calculation error.

This Resolution: Simplifies the procedure for seeking correction of custody credits when the error is discovered after sentencing.

The Problem: In enacting Penal Code section 1237.1 the Legislature intended to cut down on appeals that raised only questions of custody credits. But many times the computation error is only discovered on appeal from the conviction. To make a formal motion in the trial court may require appellate counsel, who may live far from the trial court, to travel there at state expense. This is a waste of taxpayers' money and the attorney's time. This was recognized by *People v. Acosta* (1996) 48 Cal.App.4th 411, 427, when it noted that "the Legislature intended to reduce public costs and not to create a rule where publicly compensated lawyers are flying up and down the state for hearings on motions . . ." The requirement of a formal motion was reiterated recently in *People v. Clavel* (2002) 103 Cal.App.4th 516.

This resolution simplifies the procedure by providing that counsel need only notify the trial court of the error. This may be done orally through trial counsel, by informal letter, or by a non-appearance motion. Since it is the court's duty to correct the error whenever it is brought to its attention (*Acosta, supra*, 48 Cal.App.4th at p. 428, fn. 9), presenting the claim to the trial court using any means designed to bring the problem to the court's attention should be all that is needed. If the trial court ignores the request, the defendant may appeal. The requirement that counsel serve all parties and the appellate court ensures that all those responsible for correcting the record are aware of the error.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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