

January 9, 2005

Honorable ****
San Diego County Superior Court
500 C Third Avenue
Chula Vista, CA 92083

Re: People v. Jose O***
Court of Appeal No. D0*****
Superior Court Case No. SF*****

Dear Judge ****,

I have been appointed by the Court of Appeal to represent Jose O*** in the appeal of the above-captioned matter. A review of the record discloses what I feel to be a sentencing error of the sort the Court of Appeal prefers be corrected by the trial court. The error concerns the calculation of presentence credits pursuant to Penal Code sections 2900.5 and 4019.

The Fourth District Court of Appeal, Division One, has suggested the miscalculation of the number of days to be credited against the sentence constitutes a clerical error and, even though the judgment of the superior court is pending appeal, a request to the superior court to amend the abstract of judgment to credit the appellant with the appropriate credits is the proper procedure. (*People v. Fares* (1993) 16 Cal.App.4th 954; also see *People v. Robinson* (1994) 25 Cal.App.4th 1256; *People v. Culpepper* (1994) 24 Cal.App.4th 1134; *People v. Little* (1993) 19 Cal.App.4th 449.)

In this case, at sentencing, the court credited defendant with 11 days of actual local time and 4 days of conduct credit for a total custody credit against the sentence of 15 days. (See Appendix "A", Abstract of Judgment.) This computation appears to be derived from the probation report which reflected the defendant was initially arrested and confined on September 24, 1996, and remained in custody until October 4, the date of the sentencing. (See Appendix "B", probation report.) In fact, as demonstrated by the police report, the defendant was arrested and taken into the custody of the sheriff on September 23, 1996, and remained in custody until the time of sentencing on October 4, 1996. (See Appendix "C", arrest report dated September 23, 1996.) Thus, Mr. Ortiz was in county custody for 12 actual days, which would entitle him to 6 days of conduct credit. (*People v. Bravo* (1990) 219 Cal.App.3d 729, 731; *People v. Browning* (1991) 223 Cal.App.3d 1410.)

Although this matter is one the courts of appeal prefer to leave to trial courts, it is not an insignificant one. Mr. O*** asks this court amend the Abstract of Judgment to add a total of 3 days of pre-sentence custody credit, consisting of 1 additional day of actual local time and 2 additional days of good conduct credit against the sentence imposed by the court on October 4, 1996. This increases his total custody credit from 15 days to 18 days.

Respectfully submitted,