

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

VERNON SHAW III,

Defendant and Appellant.

C043228

(Super. Ct. No.
SF082211A)

MODIFICATION OF
OPINION

THE COURT:

The opinion of this court filed September 15, 2004, in the above entitled case is modified as follows:

1. On page two, last paragraph, add the following sentence after the word "heard."

"Because defendant was convicted of multiple violent felonies within the meaning of section 667.5, section 2933.1 limits the amount of conduct credits he may accrue to no more than 15 percent of his presentence custodial credits."

2. On page two, last paragraph, change the figure "292" to "87". Also, change in the same sentence "section 4019" to "section 2933.1".

3. On page 30, 5th line down, add the following sentence after "trial court."

"Subsequent to the filing of our opinion, respondent advised us that section 2933.1 rather than section 4019 governs the amount of presentence conduct credit that may be awarded defendant."

4. On page 30, 7 lines down, insert "87 days credit pursuant to section 2933.1." in place of "292 days credit."

5. On page 33, 4th line down, delete the sentence starting with "We calculate" through the end of the paragraph and put in the following:

"However, respondent contends that section 2933.1 rather than section 4019 governs the amount of presentence conduct credit that may be awarded defendant. Although respondent failed to raise this issue in his respondent's brief, he has requested that we modify our opinion to reflect the section 2933.1 limitation on conduct credits. We have received no response from defendant. We have considered respondent's claim and find respondent is correct.

Section 2933.1 limits the amount of presentence behavioral credits a defendant may accrue when convicted of a violent felony listed in section 667.5, to no more than 15

percent of the time spent in actual custody.¹ (*People v. Ramos* (1996) 50 Cal.App.4th 810, 817.) Defendant was convicted of multiple violent felonies, including two counts of attempted murder, which is one of the offenses listed in section 667.5. (§ 667.5, subd. (c)(12).) His behavioral credits are therefore limited by section 2933.1 to 15 percent of his custody credits.

The trial court awarded defendant 584 days of custody credits. He does not challenge that figure. Fifteen percent of 584 is 87.60 days. Because the statute states "the maximum credit that may be earned against a period of confinement in . . . county jail . . . shall not exceed 15 percent of the actual period of confinement" (§ 2933.1, subd. (c)), defendant is entitled to the greatest whole number not exceeding 15 percent, here 87 days. (*People v. Ramos, supra*, 50 Cal.App.4th at pp. 816-817.) Accordingly, we shall order the abstract of

¹ Section 2933.1 provides in pertinent part:

"(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933 [relating to prison credits].

"

"(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a)."

judgment be amended to reflect an award of 87 days of presentence conduct credits."

On page 35, second line in the Disposition, change the figure "292" to "87" days.

This modification effects a change in the judgment.

BY THE COURT:

BLEASE, Acting P. J.

RAYE, J.

MORRISON, J.