

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 3 SAN JOSE DIVISION

4 Alfred Villa,

NO. C 03-04766 JW

5 Petitioner,

**ORDER GRANTING HABEAS CORPUS
 PETITION**

6 v.

7 Michael Knowles, Warden,

8 Respondent.


9 Pursuant to the Ninth Circuit remand in this action,¹ the Court GRANTS Petitioner's Petition
 10 for Writ of Habeas Corpus and remands the case to the state trial court to amend Petitioner's

11 Judgment as follows:

- 12 (1) As to pre-sentence credits, Petitioner's pre-sentence credits shall be recalculated
 13 pursuant to Penal Code § 4019, and he shall be awarded 142 days § 4019 credits. The
 14 court shall issue a minute order and Amended Judgment to reflect these
 15 modifications.
- 16 (2) With respect to post-conviction credits, the trial court shall issue a minute order and
 17 amended abstract of judgment to the Department of Corrections to restrict
 18 Petitioner's prison credits under Penal Code § 2933.1 only as to the 12 years of
 19 consecutive sentences imposed as to Counts 14 and 15, and order that as to all other
 20 portions of Petitioner's sentence, he is entitled to the one-for-one credits of § 2933.²

21 Within thirty (30) days from the date of this Order, Respondent shall file a notice with the
 22 Court as well as the required Amended Judgment from the state trial court confirming that the state
 23 has complied with the Court's Order.

24 Dated: September 27, 2010

25 
 26 _____
 27 JAMES WARE
 28 United States District Judge

29 _____
 30 ¹ (See Docket Item Nos. 43, 44.)

31 ² Although on remand, the Ninth Circuit left open the issue of whether § 2933.1 may be
 32 applied to Counts 14 and 15, Petitioner, in his post-remand brief, concedes that § 2933.1 applies to
 33 both counts. (See Docket Item No. 47 at 2-3.) Petitioner further clarifies that he has never disputed
 34 the correctness of the state appellate court's conclusion on this issue. (*Id.*) Accordingly, the Court
 35 finds that there is no longer any controversy in the Petition regarding credit restrictions and issues
 36 this Order and Amended Judgment granting the Petition for Habeas Corpus.

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Arthur Paul Beever arthur.beever@doj.ca.gov
3 Glenn R. Pruden glenn.pruden@doj.ca.gov
4 John H. Deist John.Deist@doj.ca.gov
5 William M. Robinson bill@sdap.org

6 **Dated: September 27, 2010**

Richard W. Wieking, Clerk

7 **By: /s/ JW Chambers**
8 **Elizabeth Garcia**
9 **Courtroom Deputy**

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