

1 JONATHAN B. STEINER
Executive Director
2 RONNIE DUBERSTEIN
Staff Attorney
3 (State Bar No. 150989)
CALIFORNIA APPELLATE PROJECT
4 520 South Grand Ave., 4th Floor
Los Angeles, CA 90071
5 Telephone: (213) 243-0300
6 Attorneys for Defendant
John Doe
7
8

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 THE PEOPLE OF THE) Los Angeles County
12 STATE OF CALIFORNIA,) Sup.Ct.No. BA??????
13 Plaintiff and Respondent,)
14 v.) **MOTION TO CORRECT**
15 JOHN DOE,) **PRESENTENCE CUSTODY CREDITS**
16 Defendant and Appellant.)
17)

18 TO THE HONORABLE RICHARD A. STONE, JUDGE OF THE
19 SUPERIOR COURT, WEST DEPARTMENT B02:
20

21 Defendant John Doe, by his attorney, hereby moves
22 this court to correct presentence credits awarded in this
23 case and issue a new Abstract of Judgment in the above-
24 entitled case to reflect an award of 262 days of presentence
25 custody credits. This motion is based on the attached
26 Memorandum of Points and Authorities, Declaration of RONNIE
27 DUBERSTEIN, attached Exhibits, and the file in this case.
28

1 The grounds for the motion are that defendant is entitled to
2 30 days more credit for presentence custody than awarded in
3 the judgment, and that the erroneous credit calculation
4 represents an unauthorized sentence which can and should be
5 corrected by this court.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: June 2, 2004

Respectfully submitted,
CALIFORNIA APPELLATE PROJECT
JONATHAN B. STEINER
Executive Director

RONNIE DUBERSTEIN
Attorneys for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Penal Code section 1237.1 requires that errors in
3 the award of presentence custody credits be addressed to the
4 sentencing court, even when the matter is pending on appeal.
5 This statute codifies recent Court of Appeal opinions.
6 (*People v. Wrice* (1995) 38 Cal.App.4th 767; *People v. Green*
7 (1995) 36 Cal.App.4th 280, 284; *People v. Fares* (1993) 16
8 Cal.App.4th 954, passim; *People v. Little* (1993) 19
9 Cal.App.4th 449, passim.) An erroneous credit calculation
10 is an act in excess of the sentencing court's jurisdiction,
11 and therefore may be corrected by that court whenever
12 brought to its attention. (*People v. Jack* (1989) 213
13 Cal.App.3d 913, 917; *Wilson v. Superior Court* (1980) 108
14 Cal.App.3d 816, 818-819.)

15 The sentencing court must grant a defendant actual
16 time credits both for the day of arrest and the day of
17 sentencing. (*People v. Browning* (1991) 233 Cal.App.3d 1410,
18 1412; *People v. Smith* (1989) 211 Cal.App.3d 523, 525-527.)
19 This is true even where fractions of a day are concerned.
20 (*People v. Scroggins* (1987) 191 Cal.App.3d 502, 508.)
21

22 The abstract of judgment indicates that defendant was
23 given credit for 202 days of actual custody (CT 62). The
24 reporter's transcript indicates that the court gave
25 defendant credit for 158 actual days served before being
26 placed on probation, plus 44 actual days in custody awaiting
27 the probation violation proceedings and open case upon which
28

1 the violation proceedings were based, plus 32 conduct days
2 for both periods in custody, yielding a total of 234 days.
3 (RT D-11-12.)

4
5 According to the probation report, Mr. Doe was
6 initially arrested on August 25, 2002, for an offense
7 charged in this case, and he bailed out on September 20,
8 2002. There are **27** actual custody days between and
9 including those two dates. He was then re-arrested on
10 September 21, 2002, and remained in custody until he was
11 granted probation on February 24, 2003. (CT 66-67.) There
12 are **157** actual custody days between and including those two
13 dates. He was in custody again for the open case (which was
14 eventually dismissed) and probation violation proceedings
15 from November 25, 2003, through January 8, 2004, when the
16 court imposed the previously suspended sentence. (RT D-13.)
17 There are **45** actual days between and including those two
18 dates. Consequently, defendant is entitled to **229** days of
19 credit for actual time served, i.e., 27 more days than he
20 was given.

21 This correction affects the award of good-
22 time/work-time credits, which for a violent felony sentence
23 is calculated by multiplying the actual days in custody by
24 0.15 and dropping any fractions of a day. (Penal Code, §
25 2933.1) In this case, defendant was awarded 30 days of good-
26 time/work-time credit. (CT 62). Under the above-describe
27 formula, he is entitled to **34** days good-time/work-time.
28

1 Therefore, defendant is entitled to a total of **263** total
2 days of custody credit for all time spent in custody on this
3 case.

4
5 Defendant therefore requests that an amended
6 abstract reflecting the appropriate credits be prepared and
7 forwarded to the Department of Corrections, with copies
8 provided to the Court of Appeal, to counsel for the People
9 and the undersigned.

10 DATED: June 2, 2004

11 Respectfully submitted,
12 CALIFORNIA APPELLATE PROJECT
13 JONATHAN B. STEINER
14 Executive Director

15
16 RONNIE DUBERSTEIN
17 Attorneys for Defendant

18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF RONNIE DUBERSTEIN

I, RONNIE DUBERSTEIN, declare under penalty of perjury:

1. I am the staff attorney at the California Appellate Project assigned to represent defendant, John Doe on appeal following the judgment of conviction in Superior Court case number BA??????.

2. The appeal is pending in Division Four of the Second Appellate District.

3. Attached hereto as Exhibit A is a true copy of the Abstract of Judgment which comprises page 62 of the Clerk's Transcript on Appeal.

4. Attached hereto as Exhibit B is a true copy of pages of the probation report related to defendant's time in custody, which comprise pages 66-67 of the Clerk's Transcript on Appeal.

5. Attached hereto as Exhibit C is a true copy of pages D-12 and D-13 of the Reporter's Transcript on Appeal, indicating that defendant was in custody since November 25, 2003, on matters that formed the basis for the probation violation proceedings.

Executed June 2, 2004, at Los Angeles, California.

RONNIE DUBERSTEIN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28