



## The People v. Darrell Michael Bolefahr

2011 | Cited 0 times | California Court of Appeal | October 25, 2011

P. v. Bolefahr

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NOT TO BE PUBLISHED

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Following a reported burglary and several reports of identity theft, police executed a search warrant at the home of defendant Darrell Michael Bolefahr and found evidence of defendant's involvement in the identity theft of two separate victims. Defendant was arrested and charged in case No. 10F5399 with 34 counts of identity theft-related charges, including unauthorized use of personal identification to obtain credit (Pen. Code, § 530.5);<sup>1</sup> forgery (§ 475, subd. (b)); making, possessing and uttering fictitious instruments (§ 476); grand theft of personal property (§ 487, subd. (a)); and two prior prison allegations (§ 667.5, subd. (b)).

Represented by counsel, defendant pled no contest in case No. 10F5399 to 11 counts of unauthorized use of personal identification to obtain credit and admitted one of the two prior prison term enhancements in exchange for dismissal of all remaining charges with a Harvey waiver<sup>2</sup> and a stipulated prison sentence of 12 years. As part of the negotiated plea, defendant also pled no contest in pending case No. 10F4935 to one count of identity theft (§ 530.5, subd. (a)) and one count of forgery (§ 470, subd. (d)).

The trial court sentenced defendant to 12 years in state prison as stipulated, and awarded him 35 days of actual custody credit plus 34 days of conduct credit for a total of 69 days of presentence custody credit. The court also imposed specified fees and fines in both cases.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (People v. Wende (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.



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Under a conduct credit formula enacted effective September 28, 2010, most defendants accrue presentence conduct credits at the rate of one day per day of actual presentence custody. (§ 2933, subd. (e)(1), as amended by Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010.) We conclude this formula applies to all appeals pending as of the effective date. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [statutory amendments lessening punishment apply provided the judgment of conviction is not final]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393; *People v. Doganiere* (1978) 86 Cal.App.3d 237.) Defendant is not among the prisoners excepted from the additional accrual of credit. (§ 2933, subd. (e).) Accordingly, having served 35 days of actual custody, defendant is entitled to 35 days of conduct credit, rather than the 34 days awarded by application of a prior formula, and we modify the judgment to award the additional day. (§ 1260.)

Having undertaken an examination of the entire record, we find no other arguable error in favor of defendant.

## DISPOSITION

The judgment is modified to award defendant one additional day of conduct credit. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

We concur: ROBIE , Acting P. J. BUTZ , J.

1. All undesignated code section references are to the Penal Code.

2. *People v. Harvey* (1979) 25 Cal.3d 754.

