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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-1112
of	:	APRIL 9, 1981
GEORGE DEUKMEJIAN Attorney General	:	
Thomas Y. Shigemoto Deputy Attorney General	:	

The Honorable Ruth L. Rushen, Director of the Department of Corrections, has requested an opinion on a question which we have rephrased as follows:

Is the maximum period of time to which a convicted person may be confined in the California Rehabilitation Center to be reduced by: (1) precommitment custodial time, (2) "out-to-court" time, or (3) time in local custody while on out-patient status?

CONCLUSION

The maximum period of time a convicted person may be confined in the California Rehabilitation Center ("CRC") is reduced by precommitment custodial time as provided by Penal Code section 2900.5 and "out-to-court" time during which he is removed from CRC to attend court pursuant to Penal Code section 2620 or 2621, but is not reduced by time spent in local custody unrelated to the CRC commitment while he is on outpatient status.

ANALYSIS

On July 29, 1980, Senate Bill No. 1878, amending various sections of the Welfare and Institutions Code including section 3201,[1] became law as an urgency measure without the Governor's signature. (Stats. 1980, ch. 822.) The first paragraph of subdivision (c) of section 3201, as amended in 1980, provides:

> "Any person committed pursuant to Article 2 (commencing with Section 3050), whose execution of sentence in accordance with the provisions of Section 1170 of the Penal Code was suspended pending a commitment [to the California Rehabilitation Center ("CRC") as a narcotic addict following conviction of a crime] pursuant to Section 3051, who has spent, pursuant to this chapter, *a period of time in confinement or in custody*, excluding any time spent on outpatient status, equal to that which he or she would have otherwise spent in state prison had sentence been executed, including application of good behavior and participation credit provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code, shall, upon reaching such accumulation of time, be returned by the Director of Corrections to the court from which such person was committed, which court shall discharge him or her from the program and order him or her returned to the court which suspended execution of such person s sentence to state prison. Such court, notwithstanding any other provision of law, shall suspend or terminate further proceedings in the interest of justice, modify the sentence, or order execution of the suspended sentence. Upon ordering of the execution of such sentence, the term imposed shall be deemed to have been served in full; however, such person may be subject to a period of parole, to include anti-narcotic testing, as may be provided pursuant to the provisions of Article 1 (commencing with Section 3000) of Chapter 8 of Title I of Part 3 of the Penal Code, unless the court, for good cause, waives such parole and discharges the person from the custody of the Director of Corrections." (Emphasis added; Stats. 1980, ch. 822, § 8.)

As an aid to interpreting the language of subdivision (c) of section 3201, we look to the legislative history and purpose behind it. (*County of Nevada v. MacMillen* (1974) 11 Cal. 3d 662, 673, fn. 9.) And we accord to the words used their usual, ordinary and common sense meaning in light of such history and purpose. (See *In re Rojas* (1979) 23 Cal. 3d 152, 155.)

[1] Hereafter all section references will be to the Welfare and Institutions Code unless otherwise noted.

Prior to the enactment of the 1980 amendment, section 3201 provided that if a committed person had not been discharged *at the expiration of seven years*, such person must be returned to the court which committed him, to be discharged; the person was then required to be returned to the criminal court for imposition of a suspended sentence or, if he gave promise of amenability to further treatment, the *committing court could order an additional commitment of up to three years.* (Stats. 1965, ch. 1226, § 2.) The purpose of the 1980 amendment of section 3201 is set forth in the Legislative Counsel's Digest (Stats. 1980, ch. 822) which reads in part as follows:

> *" . . . The hill would require a defendant to be discharged from the narcotic rehabilitation program when he or she has served time equal to his or her sentence under the Determinate Sentencing Act, if his or her sentence had been executed*, and returned to the criminal court for his or her discharge or execution of sentence which is deemed served . . . .[¶] The bill would require the provisions of the act relating to a person convicted of a crime to apply prospectively to a person who commits a crime on or after the effective date of the act." (Emphases added.)

Subdivision (c) of section 3201 places a limit on the time a person can be confined in CRC pursuant to a commitment under section 3051.[2] That limit is set forth in the following language:

> " . . . a period of time in confinement or in custody, excluding any time spent on outpatient status, equal to that which he or she would have otherwise spent in state prison had sentence been executed, . . ."

The time to be spent in state prison for most offenses is the sentence fixed by the sentencing court pursuant to the Determinate Sentencing Act less any credits provided by law. While the execution of the sentence is suspended when the defendant is committed to CRC pursuant to section 3051, such sentence and any credits provided by law applicable thereto define the maximum period of time to which the defendant may be confined in CRC under section 320l(c). We are asked whether this maximum period is reduced by:

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[2] The Legislature departed from the then-established rule that persons involuntarily committed for treatment purposes may be committed for a period of time up to the *maximum* terms for which he or she could be imprisoned for the underlying criminal offense and that such persons *need not* be given conduct credits for time spent during the period of commitment in a treatment facility. (Welf. & Inst. Code, §§ 726, 6316.1; *People v. Sage* (1980) 26 Cal. 3d 498, 501, *In re Eric J.* (1979) 25 Cal. 3d 522, 533, 536, *In re Moye* (1978) 22 Cal. 3d 457. 460; see *People v. Willaims* (1980) 166 Cal. Rptr. 479, 481–483, rehg. granted April 15, 1980. dismissed as moot Nov 21, 1980.)

(1) precommitment custodial time,

(2) "out-to-court" time, or

(3) time in local custody while on outpatient status.

We assume that the "precommitment custodial time' referred to in the question is that for which credit is allowed on the term of imprisonment pursuant to Penal Code section 2900.5. That section generally provides that time spent in custody in local detention facilities which is attributable to the same conduct for which defendant has been convicted shall be credited upon his term of imprisonment. The 1980 amendment to section 2900.5 (Stats. 1980, ch. 297, § 1) further provides that days earned for good behavior while in local custody (Pen. Code, § 4019) shall also be credited. (See *People* v. *Sage* (1980) 26 Cal. 3d 498, 505–507.) We conclude that the maximum period of time for which such person may be confined in CRC is to be reduced by the precommitment custodial time credits provided by Penal Code section 2900.5.

With respect to "out-to-court time, we assume that is meant to be the time during which an inmate is removed from CRC to attend court proceedings pursuant to section 2620 or 2621 of the Penal Code. Both sections provide that when a prison inmate is removed from prison to attend court pursuant thereto, he or she remains in constructive custody of the warden. During such constructive custody, credit is received against the underlying prison term. (*In re Rojas* (1979) 23 Cal. 3d 152, 154–155; see *In re Hodges* (1979) 89 Cal. App. 3d 221, 226.) The sections are applicable to CRC inmates pursuant to Welfare and Institutions Code section 3305. We conclude that the maximum period of time to which such person may be confined in CRC is to be reduced by "out-to court" time during which he or she is removed from CRC pursuant to section 2620 or 2621.

As to the "time in local custody while on outpatient status," we note that section 320 1(c) expressly excludes "any time spent on outpatient status" from the "period of time in confinement or in custody" referred to in that subdivision. We, therefore, assume that the phrase "time in local custody" refers to incarceration in a local detention facility which is unrelated to the CRC commitment or the conditions of his release while on outpatient status.

Our research failed to yield any authority on the question; however, we believe the situation to be analogous to one where a person seeks pretrial custodial credit For an unrelated offense pursuant to Penal Code section 2900.5. As our supreme court stated:

> "The crucial element of the statute is not where or under what conditions the defendant has been deprived of his liberty but rather whether the custody to which he has been subjected 'is attributable to charges arising from the same criminal act or acts for which the defendant has been convicted.'" (*In re Watson* (1977) 19 Cal. 3d 646, 651; see *In re Rojas* (1979) 23 Cal. 3d 152, 156–157.)

We therefore conclude that the maximum period of time of confinement in CRC is not affected by any time spent by a person in local custody which is nonattributable or unrelated to his or her CRC commitment, while on outpatient status from CRC. Where the time in local custody results from detention for violation of the terms and conditions of the release on outpatient status pending return to CRC or other cause attributable to the CRC commitment such local detention is counted as time in custody pursuant to the CRC commitment. (See Welf. & Inst. Code, § 3305; Pen. Code, § 3064; *In re O'Neil* (1977) 74 Cal. App. 3d 120, 123–124.)

In summary, the limit which section 3201(c) places upon the "period of time in confinement or in custody" to which a person may be committed to CRC is determined by reducing the term imposed by the superior court by, the person's precommitment custodial time and "out-to-court" time, but not by such person's time in local custody unrelated to his or her CRC commitment while on outpatient status.

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