

No. S286297

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

CHRISTOPHER LEE COFER,
Defendant and Appellant.

Sixth Appellate District, Case No. H050122
Monterey County Superior Court, Case Nos. 20CR010763,
20CR008059, 21CR000245, 21CR001076, 21CR001243
The Honorable Stephanie E. Hulsey, Judge

OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

When separate criminal cases are jointly resolved by plea bargain and given concurrent sentences at a single hearing, does Penal Code section 2900.5 require presentence custody credit for time during which the defendant was out of custody on a case while simultaneously in custody on a different case?

INTRODUCTION

Penal Code section 2900.5 authorizes credit against a sentence for all presentence custody, but “only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted.” (Pen. Code, § 2900.5, subd. (b).)¹ In interpreting this language in other contexts, where concurrent sentences were imposed in multiple cases at separate hearings, this Court has long required that the custody be strictly attributable to the underlying conduct in a case before it could be credited to that particular case. (See *People v. Bruner* (1995) 9 Cal.4th 1178, 1192.)

The Court of Appeal below held that “a defendant who is simultaneously sentenced to concurrent terms in multiple open cases, where all presentence custody derives solely from those charges, is entitled to presentence custody credit toward all of those sentences,” even in cases where the defendant was out of custody. (Opn. 10.) But by the statute’s express terms, and consistent with its legislative history and this Court’s precedent, credit is authorized against a sentence in a case only when the

¹ All subsequent statutory references are to the Penal Code unless stated otherwise.

custody is attributable to the conduct underlying that particular case. “Section 2900.5 does not authorize credit where the pending proceeding has no effect whatever upon a defendant’s liberty.” (*In re Rojas* (1979) 23 Cal.3d 152, 156.)

For purposes of section 2900.5, a consolidated sentencing hearing is not a “proceeding” that makes all custody in separate cases creditable to every case disposed of at the hearing. Contrary to the Court of Appeal’s view, the statutory language is unambiguous in this regard. Moreover, extrinsic evidence of legislative intent confirms that section 2900.5 does not contemplate assigning custody credit accrued in one criminal case to another when those cases are based on unrelated conduct. The trial court below thus correctly concluded that, in this scenario, custody credit is awarded separately based on the custody attributable to each case.

LEGAL BACKGROUND

A. Section 2900.5

Section 2900.5, subdivision (a), provides in pertinent part: “In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail,” that period of custody “shall be credited upon his or her term of imprisonment.” Subdivision (b) of that section specifies: “For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.”

The Legislature enacted section 2900.5 in 1971 (Stats. 1971, ch. 1732, § 2, p. 3686), to mandate presentence custody credit against prison sentences (Legis. Counsel’s Dig., Assem. Bill No. 1237, 2 Stats. 1971 (Reg. Sess.) Summary Dig., p. 262). As originally enacted, the statute required credit for custody in a city or county jail from the date of arrest to the commencement of sentence. (Stats. 1971, ch. 1732, § 2, p. 3686.) And it provided: “For the purposes of this section, credit shall be given only where the custody to be credited is attributable to charges arising from the same criminal act or acts for which the defendant has been convicted.” (Stats. 1971, ch. 1732, § 2, p. 3686.) The intent was that a defendant “be given credit only for time spent in jail as a result of charges that arose from the same criminal acts supporting the offense for which he was convicted.” (Assem. Com. on Criminal Justice, Bill Dig., Assem. Bill No. 1237 (1971 Reg. Sess.) as amended May 13, 1971.)

The Legislature made notable amendments to section 2900.5 in 1976 and again in 1978, focusing primarily on the type of presentence custody for which credit is authorized and the manner in which custody time is credited.

The 1976 amendment was intended to “[e]nhance sentence credits for time served prior to trial.” (Sen. Com. on Judiciary, Criminal Sentencing-Credits, Assem. Bill No. 3653 (1975-1976 Reg. Sess.) as amended Aug. 13, 1976, p. 2.) It extended creditable presentence custody from only jail time to time spent in any “camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, or similar institution.”

(Stats. 1976, ch. 1045, § 2, p. 4665.) The amendment also “eliminat[ed] the limitation of creditable custody to that occurring between arrest and sentencing” by removing language to that effect from subdivision (a). (Sen. Com. on Judiciary, Criminal Sentencing-Credits, Assem. Bill No. 3653, *supra*, as amended Aug. 13, 1976, p. 5; see former § 2900.5, subd. (a), as amended by Stats. 1976, ch. 1045, § 2, pp. 4665-4666.)

In addition, the 1976 amendment sought to “allow[] credit for custody attributable to related proceedings, rather than related charges.” (Sen. Com. on Judiciary, Criminal Sentencing-Credits, Assem. Bill No. 3653, *supra*, as amended Aug. 13, 1976, p. 5, underscoring omitted.) Subdivision (b) of section 2900.5 was thus amended to provide: “For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted.” (§ 2900.5, subd. (b), as amended by Stats. 1976, ch. 1045, § 2, p. 4666.) That portion of the statute remains unchanged since 1976.

According to the legislative history, these amendments were designed to “insure that inmates would receive credits for all time in custody or in court ordered programs to be applied to the sentence” and to “insure that the Adult Authority [would] no longer frustrate the intent of . . . section 2900.5 in making its decisions of parole.” (Sen. Com. on Judiciary, Background Information on Assem. Bill No. 3653 (1975-1976 Reg. Sess.)) The Legislature intended the changes—including the new focus on “proceedings”—“to require the granting of credit for time spent in

the California Rehabilitation Center” and in a hospital. (Sen. Com. on Judiciary, Criminal Sentencing-Credits, Assem. Bill No. 3653, *supra*, as amended Aug. 13, 1976, p. 5; see also Assem. Com. on Criminal Justice, Bill Dig., Assem. Bill No. 3653 (1975-1976 Reg. Sess.) May 5, 1976, pp. 1-2 [stating that “[t]here is no statute requiring CRC time to be credited” and that “CRC time would now be credited to a subsequent commitment to prison after exclusion from CRC”]; Alan Sumner, Mem. to Mike Ullman, Sept. 9, 1976, p. 1 [stating that by the amendment, subdivision (b) “should now cover all hospital and C.R.C. time attributable to proceedings”].)²

In 1978, the Legislature again expanded creditable custody to include time spent in a juvenile detention facility or similar residential institution. (Stats. 1978, ch. 304, § 1, pp. 632-633.) In addition, it sought to “specif[y] the manner in which [custody time] is to be credited for multiple offenses for which consecutive sentences are imposed.” (Leg. Counsel’s Dig., Sen. Bill No. 1507, 1 Stats. 1978 (1977-1978 Reg. Sess.) Summary Dig., p. 74.) It thus added a second sentence to subdivision (b) of section 2900.5, stating, “Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.” (§ 2900.5, subd. (b), as amended by Stats. 1978, ch. 304, § 1, p. 632.)

The Assembly Committee on Criminal Justice stated that this amendment “would provide that no double credit be given for

² The memorandum was in the Governor’s chaptered bill file for Assembly Bill No. 3653.

the same period of time in custody if a consecutive sentence is imposed,” addressing the concern that if dual credit were not eliminated, courts “would be unable to adequately impose harsher penalties for consecutive sentences.” (Assem. Com. on Criminal Justice, Analysis of Sen. Bill No. 1507 (1977-1978 Reg. Sess.) as amended May 17, 1978, pp. 1-2.) The committee stated that the amendment would allow, however, “for double credit for the same period of custody if a concurrent sentence is imposed.” (*Id.* at p. 2.)³

B. This Court’s decisions interpreting section 2900.5, subdivision (b) as applied to separately imposed concurrent sentences

This Court has addressed the meaning of the statutory language pertinent here—“attributable to proceedings related to the same conduct for which the defendant has been convicted”—in several decisions. Those decisions involved periods of simultaneous custody in multiple proceedings where concurrent sentences were separately imposed. In each, consistent with the statute’s plain language and legislative history, the Court held that section 2900.5, subdivision (b), authorized credit only if the

³ The analysis provided as an example a defendant convicted of two counts of forgery with six months’ presentence custody time. (Assem. Com. on Criminal Justice, Analysis of Sen. Bill No. 1507, *supra*, as amended May 17, 1978, p. 2.) According to the analysis, if a consecutive sentence were imposed with a two-year term on one count and an eight-month term on the other, six months would be credited solely against the two-year term, “resulting in a 26 month sentence.” (*Ibid.*) If the defendant were sentenced to two years concurrent on each count, he or she would receive six-months credit on each term, “resulting in an 18 month term on each count.” (*Ibid.*)

defendant's presentence custody was caused by the offense in the proceeding where credit was claimed.

In *Rojas, supra*, 23 Cal.3d 152, this Court held that section 2900.5, subdivision (b), did not authorize presentence custody credit in a murder case because, at the time he was held in local custody pending trial for the murder, the defendant was simultaneously serving a prison term for an unrelated manslaughter conviction. (*Id.* at pp. 154-155.) Rejecting the defendant's argument that he was entitled to duplicate credit for his presentence custody in the murder case because the statute "does not read '*exclusively* attributable to proceedings,'" the Court concluded that the statute "clearly provide[s] that credit is to be given 'only where' custody is related to the 'same conduct for which the defendant has been convicted.'" (*Id.* at p. 155.) "The sensible inference" from that language, the Court reasoned, "is that a defendant is not to be given credit for time spent in custody if during the same period he is already serving a term of incarceration." (*Id.* at pp. 155-156.)

A decade later, in *In re Joyner* (1989) 48 Cal.3d 487, the Court held, consistently with *Rojas*, that "a period of time previously credited against a sentence for unrelated offenses cannot be deemed 'attributable to proceedings' resulting in a later-imposed sentence unless it is demonstrated that the claimant would have been at liberty during the period were it not for a restraint relating to the proceedings resulting in the later sentence." (*Id.* at p. 489.) *Joyner* involved a defendant sentenced to a concurrent term in California after first having been

sentenced in a Florida case. (*Ibid.*) When sentenced in California, he requested credit for time spent in presentence custody that had already been credited against his Florida sentence. (*Ibid.*) He argued that the time was also “attributable to” the California case because California had placed a hold on him while he was in Florida custody. (*Ibid.*) This Court determined that “duplicative credits against separately imposed concurrent sentences for unrelated offenses will be granted only on a showing of strict causation.” (*Ibid.*) The Court reasoned that, once the custody was credited against the Florida sentence, the defendant “in effect was serving a sentence on another conviction,” like the defendant in *Rojas*. (*Id.* at p. 492.) While the custody “may not have been unavoidable,” there was no evidence that the defendant could have obtained release had the California hold not been placed against him. (*Ibid.*) In other words, the Court concluded, it did not appear that the California hold “had any effect” on the defendant’s liberty “at any time.” (*Ibid.*)

In so holding, the Court criticized an earlier decision, *In re Atilas* (1983) 33 Cal.3d 805, 809-811, that had credited the same period of presentence custody against both a parole revocation term and a new conviction. (*Joyner, supra*, 48 Cal.3d at pp. 493-494.) In the *Joyner* Court’s view, *Atilas* “went astray” in its discussion of the legislative purposes of section 2900.5, which “are concerned with equalizing the treatment of different individuals each convicted in a single proceeding of the same offense or offenses.” (*Id.* at p. 494.) It stated that this legislative

goal does not mean “that section 2900.5 should be applied invariably to maximize the concurrency of terms imposed at different times.” (*Ibid.*) The Court continued: “There is no persuasive indication that section 2900.5 was intended to achieve the goal of making the net time served on separately imposed concurrent terms equal to the net time served on concurrent terms imposed at one time in a single proceeding.” (*Ibid.*)⁴

This Court’s subsequent decisions have followed *Joyner*’s strict causation rule. Thus, in *Bruner, supra*, 9 Cal.4th 1178, this Court rejected the defendant’s claim for credit where he could not show that the conduct underlying the term to be credited “was also a ‘but for’ cause of the earlier restraint.” (*Id.* at p. 1194.) There, the defendant was arrested and remained in custody on a parole hold while he was released on his own recognizance in a newly charged case. (*Id.* at p. 1181.) The defendant’s parole was revoked, prison time imposed, and prerevocation custody time credited toward the sentence in his parole case. (*Ibid.*) The

⁴ Two justices dissented in *Joyner*. They would have awarded dual credit on the principle that “the defendant need only show that the charge as to which he seeks credit was a basis, not necessarily the exclusive basis, for the custody.” (*Joyner, supra*, 48 Cal.3d at p. 496 (dis. opn. of Broussard, J.)) In their view, this rule is necessary to prevent unequal treatment of indigents that may result from denial of credit on multiple concurrent terms, since “[t]he accused who has sufficient funds to post bail in two separate proceedings against him, and who is ultimately sentenced to concurrent terms in those proceedings, will serve less time in custody than the indigent who is also sentenced to concurrent terms for identical offenses, but who was unable to post bail in one or both of the proceedings.” (*Id.* at p. 497.)

defendant argued that section 2900.5 entitled him to duplicate credit against the concurrent sentence subsequently imposed in the new case from the time of his arrest for the parole violation through sentencing in the new case. (*Id.* at p. 1182.)

The Court held that “when presentence custody may be concurrently attributable to two or more unrelated acts, and where the defendant has already received credit for such custody in another proceeding, the strict causation rules of *Joyner* should apply.” (*Bruner, supra*, 9 Cal.4th at p. 1180.) The Court observed that post-*Joyner* cases correctly “apply a general rule that a prisoner is not entitled to credit for presentence confinement unless he shows that the conduct which led to his conviction was the sole reason for his loss of liberty during the presentence period.” (*Id.* at p. 1191.) “The rule of ‘strict causation’ developed in [*Joyner* and *Rojas*] stems from the conclusion that section 2900.5 did not intend to allow credit for a period of presentence restraint unless the *conduct* leading to the sentence was the *true and only unavoidable basis* for the earlier custody.” (*Id.* at p. 1192.) And “neither the words nor the history of section 2900.5 implies that separately imposed criminal and revocation terms based on unrelated conduct should collapse into one simultaneous term whenever it happens that there was some common factual basis for both proceedings.” (*Id.* at p. 1193.)

The Court acknowledged that the strict causation approach may require a defendant to, in effect, “prove a negative.” (*Bruner, supra*, 9 Cal.4th at p. 1193.) But that “difficulty . . . arises from the limited purposes of the credit statute itself”

(*ibid.*), and the burden, “while onerous, is not necessarily impossible” (*ibid.*, fn. 10). The Court also observed that “any rule or combination of rules is likely to produce some incongruous results and arguable unfairness when compared to a theoretical state of perfect and equal justice.” (*Id.* at pp. 1194-1195.)

In a footnote, the Court addressed an implication in the *Atiles* decision that “dual credits might be available against multiple concurrent sentences.” (*Bruner, supra*, 9 Cal.4th at p. 1192, fn. 9.) It rejected that implication, observing that “there is no indication the 1978 amendment was concerned with concurrent sentences for unrelated conduct imposed in *multiple proceedings*.” (*Ibid.*) Rather, “the amendment does no more than clarify that when consecutive terms are imposed for multiple offenses in a single proceeding, only one of the terms shall receive credit for presentence custody, while leaving undisturbed the accepted principle that when *concurrent* sentences are imposed at the same time, presentence custody is credited against all.” (*Ibid.*)

This Court’s most recent decision on the same dual-custody issue, *In re Marquez* (2003) 30 Cal.4th 14, addressed whether a defendant was entitled to credit for time in presentence custody while simultaneously serving a prison sentence for an unrelated conviction that was ultimately reversed. (*Id.* at p. 17.) The Court held that the credit was authorized under section 2900.5. (*Ibid.*) *Marquez* observed that “[i]f an offender is in pretrial detention awaiting trial for two unrelated crimes, he ordinarily may receive credit for such custody against only one eventual sentence.” (*Id.*

at p. 21.) But once the defendant’s first conviction was reversed, “he was returned to a situation indistinguishable from that of a defendant who had been charged in that county, but never tried.” (*Id.* at p. 22.)

The Court further explained that the “strict causation” standard did not dictate a different result under these circumstances. (*Marquez, supra*, 30 Cal.4th at p. 23.) That rule “is applicable in cases involving the possibility of *duplicate credit* that might create a windfall for the defendant.” (*Ibid.*) But once the defendant’s first case was reversed, there was no possibility of a windfall. (*Ibid.*) “Unlike in *Bruner* and *Joyner*, the choice is not between awarding credit once or awarding it twice. The choice is instead between granting petitioner credit *once*” for the presentence custody time in the second case “or granting him *no credit at all* for this period of local custody.” (*Ibid.*) The latter option would have rendered the period “‘dead time,’ that is, time spent in custody for which he receives no benefit.” (*Id.* at p. 20.) Although dead time might in some circumstances be unavoidable—for example, where no pretrial hold is ordered in a later-filed case—here the defendant’s dual-cause custody period remained available to be credited to the second case after the first case was invalidated. (*Ibid.*)

C. Lower court authority addressing custody credit for concurrent sentences imposed in unrelated cases at a single hearing

This Court has not directly addressed the precise scenario presented here, where concurrent terms in separate cases based on unrelated conduct were imposed at a single hearing. But two

published Court of Appeal decisions before the one below have considered the issue.

In *People v. Kunath* (2012) 203 Cal.App.4th 906, the defendant was arrested and released on bail. (*Id.* at p. 909.) He was later arrested on a second, unrelated case and held in custody pending trial. (*Ibid.*) After pleading guilty in both cases, he was sentenced at a single hearing to concurrent terms and the trial court awarded “full custody credit” on the first case but not on the second, rejecting the defendant’s argument that he should receive custody credit “in each case for the time he was in custody on both cases.” (*Ibid.*)

The Court of Appeal reversed, holding that the defendant was “entitled to full credit for the time spent in presentence custody in both cases.” (*Kunath, supra*, 203 Cal.App.4th at p. 911.) It reasoned that the purpose of section 2900.5 “to equalize the total time in custody between those who suffered presentence custody on unproven charges and those who did not” would be frustrated if full custody credit in each case were not awarded. (*Id.* at pp. 910-911.) Noting *Bruner*’s comment that “[w]hen concurrent sentences are imposed at the same time, presentence custody is credited against all” (*id.* at p. 910), the court held that, when “the defendant’s custody is solely presentence on all charges and he is simultaneously sentenced on all charges to concurrent terms,” “[p]resentence custody credits must apply to all charges to equalize the total time in custody

between those who obtain presentence release and those who do not” (*id.* at p. 911).⁵

In *People v. Jacobs* (2013) 220 Cal.App.4th 67, the Court of Appeal considered another situation in which concurrent sentences in unrelated cases were imposed at a single hearing. There, the defendant was arrested and posted bail, and he was later charged and arraigned based on that offense. (*Id.* at p. 72.) While still out on bail, the defendant was arrested for unrelated offenses, taken into custody, and charged and arraigned in a second case. (*Ibid.*) The defendant later reached a plea bargain and pleaded guilty in both cases. (*Id.* at p. 73.) The defendant’s bond was exonerated and he was placed in custody in the first case but simultaneously released on his own recognizance in the second case. (*Id.* at p. 74.) Later, at a single sentencing hearing, the court imposed concurrent sentences in the two cases and awarded presentence credit separately for the corresponding time the defendant was in custody in each case. (*Ibid.*)

⁵ To support that conclusion, the court hypothesized two defendants arrested at the same time, both of whom were charged with the same two offenses, and both of whom pleaded guilty one year later and were sentenced to concurrent one-year terms. (*Kunath, supra*, 203 Cal.App.4th at p. 911.) The court stated that if one defendant was able to make bail upon arrest, while the other was not, then in the absence of full custody credit the sentence in the second defendant’s case would be “tantamount to receiving no credit because he has to spend another year in custody on count 2. He will have spent two years in custody. Defendant One, however, who has been free on bail will spend only one year in custody.” (*Ibid.*)

The Court of Appeal began its analysis by discussing *Joyner* and *Bruner*, observing that, in construing section 2900.5, those cases “recognized and applied a rule of ‘strict causation’ to ‘cases involving the possibility of *duplicate credit* that might create a windfall for the defendant.” (*Jacobs, supra*, 220 Cal.App.4th at p. 79.) The court noted that *Bruner* had distinguished between concurrent sentences for unrelated conduct imposed in multiple proceedings and such sentences imposed in the same proceeding, and that in doing so it had referred to “the accepted principle that when *concurrent* sentences are imposed at the same time, presentence custody is credited against all.” (*Id.* at p. 81.) The *Jacobs* court explained that this rule had been understood to govern cases in which “multiple crimes are prosecuted in a single proceeding and concurrent sentences are ordered,” but that the *Kunath* court had “extended this principle to simultaneous concurrent sentencing in multiple cases.” (*Ibid.*)

After discussing the analysis in *Kunath*, the *Jacobs* court stated that it understood *Kunath*’s holding to be that “when a trial court imposes only concurrent sentences in multiple cases at the same time, a defendant is entitled to all presentence custody attributable to each of the proceedings so long as that custody has not been already credited to a previously imposed sentence.” (*Jacobs, supra*, 220 Cal.App.4th at p. 83.) It also stated, “We do not read *Kunath* as authorizing credit for a period of custody that cannot be attributed to a proceeding.” (*Ibid.*) And, “[t]o the extent that *Kunath* may be construed as disregarding the ‘attributable’ requirement and reaching a result that is

inconsistent with the express language of section 2900.5, subdivision (b), we respectfully disagree with that result.” (*Ibid.*)

So understood, the *Jacobs* court distinguished *Kunath*, which was “designed to protect a defendant held in presentence custody on two charges *at the same time*,” from the facts it was considering, which showed that the defendant “was not simultaneously in custody on both charges, save for one day.” (*Jacobs, supra*, 220 Cal.App.4th at p. 84.) The court thus held that the defendant was not entitled to aggregate credit for all custody time against the sentences imposed in both cases, since (except for the single day he was in custody on both) his custody in each case was not “attributable to” the other proceeding. (*Ibid.*) Rather, the defendant was entitled to credit in each case for the time he was actually in custody on that case. (*Ibid.*)

STATEMENT OF THE CASE

On September 27, 2020, appellant was arrested and taken into custody for breaking into a vehicle at Point Lobos State Park that day (case A). (CT 68-69 [case No. 20CR008059]; 2ACT 579.)⁶ Two days later, he was arraigned on the resulting charges of second degree burglary (§§ 459, 460, subd. (b)), misdemeanor possession of burglar’s tools (§ 466), and misdemeanor driving without a license (Veh. Code, § 12500, subd. (a)). (1ACT 42-45; 2ACT 369-370.)⁷ Bail was set at \$60,000. (2ACT 370.) On

⁶ “ACT” refers to the augmented clerk’s transcript filed in the Court of Appeal on March 9, 2023.

⁷ The complaint also alleged that appellant was previously convicted of two strikes (§ 1170.12, subd. (c)(1)). (1ACT 43.) The
(continued...)

November 10, 2020, appellant posted bail and was released.
(2ACT 579.)

Appellant was arrested and taken into custody again on January 12, 2021, in two new cases (cases B and C). (2ACT 579 [case Nos. 20CR010763 & 21CR000245].) Case B pertained to a second degree burglary and a grand theft (§ 484g, subd. (a)) appellant committed at Point Lobos State Park in September 2020. (CT 8-10, 66-67.) Case C pertained to a second degree burglary and misdemeanor vandalism (§ 594, subd. (b)(2)(A)) appellant committed at Speedy Time Laundry in Seaside in January 2021. (CT 67-68; 1ACT 104-106.) Appellant was arraigned in both cases on January 14, 2021, and released on his own recognizance in each four days later. (CT 11-12; 1ACT 107-108; 2ACT 579.) Appellant remained on bail in case A. (Opn. 3.)

On February 13, 2021, appellant was arrested in the final two matters (cases D and E). (2ACT 579-580 [case Nos. 21CR001076 & 21CR001243].) Case D pertained to appellant's commission of second degree burglary, misdemeanor possession of burglar's tools, and misdemeanor possession of an injection or ingestion device (Health & Saf. Code, § 11364, subd. (a)) at Cagwin and Dorward Landscaping in Monterey that day. (CT 71-72; 1ACT 119-122.)⁸ Case E stemmed from a second

complaints filed in appellant's subsequent cases alleged a single strike. (CT 9; 1ACT 105, 120, 126.)

⁸ The complaint in case D also alleged that appellant committed the offenses while released on bail or on his own recognizance in cases A, B, and C (§ 12022.1, subd. (b)). (1ACT 120-121.)

degree burglary appellant perpetrated at a residential carport in Monterey in January 2021. (CT 70; 1ACT 125-127.) Appellant was arraigned in case D on February 16, 2021, and bail was set at \$120,000. (1ACT 123-124.) Appellant was arraigned in case E on March 3, 2021, and bail was set at \$20,000. (1ACT 139-140.) Appellant did not post bail and remained in custody on cases D and E, while out of custody on cases A, B, and C. (Opn. 3.)

The prosecution moved to consolidate the five cases pursuant to section 954 in August 2021. (CT 27-35.) Appellant opposed the motion (CT 36-39), which was never heard.

On August 18, 2021, the superior court declared a doubt regarding appellant's competency, suspended criminal proceedings in all five cases, and revoked appellant's bail in cases A, B, and C. (CT 41-42; 1ACT 223-229.)

Criminal proceedings were reinstated on September 1, 2021. (CT 43; 1ACT 235-242.) The court discharged the bail bond and released appellant on his own recognizance in cases A and B, but ordered him to remain in custody on cases C, D, and E. (Opn. 3-4.)

One plea bargain resolved the five cases. (Opn. 2.) On January 26, 2022, appellant pleaded no contest to felony second degree burglary in cases A, B, and C and misdemeanor second degree burglary in cases D and E and admitted a strike allegation in case B. (CT 48-49; 1ACT 257-258, 260-265.) On March 25, 2022, the court remanded appellant into custody in cases A and B pending sentencing, at which point appellant was in custody on all five cases. (CT 55; 1ACT 277-282.)

The court sentenced appellant in the five cases on March 30, 2022. (CT 56-58, 96-97; 1ACT 283-291.) Consistent with the parties' agreement, the court imposed a six-year prison term in case B, concurrent prison terms of two years in cases A and C, and concurrent one-year jail terms in cases D and E. (CT 56-57, 96-97; 1ACT 283-291.) The court dismissed the remaining charges in each case with waivers pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. (CT 57; 1ACT 284-285, 287, 289.)

The court awarded appellant custody credit separately in the five cases based on the different periods appellant was in actual custody on each case. In case A, the court awarded 66 days of custody credit and 66 days of conduct credit. (CT 97; 1ACT 283-284.) In case B, the court awarded 21 days of custody credit and 20 days of conduct credit. (CT 56-57, 97.) In case C, the court awarded 225 days of custody credit plus 224 days of conduct credit. (CT 97; 1ACT 286-287.) In both cases D and E, the court awarded 183 days of custody credit plus 182 days of conduct credit. (1ACT 288-290.)

Appellant later filed a motion in the superior court for the correction of his presentence credits (§ 1237.1) and supplied information about his custody status in each case. (2ACT 338-358.) He requested an award of "dual credits" for the time he was on bail or on his own recognizance in cases A, B, and C while simultaneously in custody on cases D and E. (2ACT 341.) Relying on *Jacobs, supra*, 220 Cal.App.4th 67, the superior court denied appellant's request for dual credits but ordered an

additional seven days of presentence custody credit in cases B and C. (2ACT 593-594.)

The Court of Appeal reversed in a divided opinion. The majority began its analysis by observing that *Joyner* and *Bruner* “involved situations where a defendant had already received presentence custody credits in another proceeding before being sentenced in the case for which he sought credit,” whereas appellant “seeks presentence custody credits for all cases resolved in a single negotiated disposition and sentenced at a single hearing.” (Opn. 6.) It then discussed *Kunath* and *Jacobs*, noting that they “involved a procedural posture more similar to that presented here.” (Opn. 6.)

As applied to the facts of this case, the majority viewed the relevant statutory phrase, “attributable to proceedings related to the same conduct,” as ambiguous. (Opn. 8.) According to the majority, one possible interpretation is that the phrase means that “each criminal case must be considered a separate proceeding even if resolved and sentenced at the same time,” so that “a defendant would not receive credit in one case for time spent in actual custody in a second case if the defendant was technically ‘on bail’ in the first case.” (Opn. 8.) On the other hand, the majority stated, the phrase could mean that “a defendant is entitled to credit in all cases that are resolved and sentenced together for all custody attributable to all conduct in those cases occurring after the defendant’s arrest in any given case.” (Opn. 8-9.) Under that interpretation, “a defendant would receive credit for all days of actual custody without regard to

contemporaneous ‘on bail’ or ‘own recognizance’ status in any particular case.” (Opn. 9.)

The majority invoked a portion of this Court’s *Joyner* decision stating that courts should construe section 2900.5 in a manner “which is faithful to its language, which produces fair and reasonable results in a majority of cases, and which can be readily understood and applied by trial courts.” (Opn. 9, quoting *Joyner, supra*, 48 Cal.3d at p. 495.) It held that “[w]here a defendant is convicted and sentenced at the same hearing on multiple open cases, we believe it is fair and reasonable that the defendant receive credit for all days actually spent in presentence custody; those days should not be limited based on purely technical noncustodial status in any particular case.” (Opn. 9.)

The majority acknowledged that its construction could reward defendants who engage in additional criminal behavior while out on bail or their own recognizance. (Opn. 9-10.) It also acknowledged that “some defendants who are arrested while released on bail may seek to retain their on-bail status in an earlier case in the hope of finding sufficient resources to post bail in a later-filed case or cases.” (Opn. 10.) But it reasoned that its construction was necessary “to eliminate unequal treatment between defendants who are versus are not able to post bail.” (Opn. 10.) The majority thus concluded that, “a defendant who is simultaneously sentenced to concurrent terms in multiple open cases, where all presentence custody derives solely from those charges, is entitled to presentence custody credit toward all of those sentences.” (Opn. 10.) And that principle applies “even

when, as here, a defendant is not technically in custody at all times in all cases.” (Opn. 10.) A defendant would not receive credit, however, “for time spent in custody before the initial arrest in any given case.” (Opn. 10.)

Justice Lie dissented. In her view, the majority’s construction—while fair and reasonable as a matter of policy—conflicted with this Court’s precedent and *Jacobs*. (Dis. Opn. 1.) She stated, “I read section 2900.5 to mean that credit for a single period in presentence custody will be given against multiple concurrent sentences imposed in multiple cases, so long as the presentence custody is attributable to each of those cases.” (Dis. Opn. 2.) And because the basis for appellant’s custody status in each of his cases was independent of the other cases, “he would not be entitled to credit in cases A or B for time accrued only in cases C, D, and E. That all cases were later sentenced in a single coordinated hearing did not retroactively change his release status in cases A, B, and C or expand the bases for his confinement in cases D and E.” (Dis. Opn. 2.)

Justice Lie explained that “trial counsel and the courts have long understood section 2900.5” to operate in this way and that “the typical means of avoiding the suboptimal allocation of credits would have been for Cofer to promptly seek remand in cases A, B, and C upon his latest arrest and failure to secure release in cases D and E.” (Dis. Opn. 2.) She also pointed out that appellant understood the applicable rule given his assertion at sentencing that he had requested bail revocation, which belied any supposed “expectation that the scheduling of his disparate cases for

simultaneous sentencing might entitle him to credit in all cases for presentence custody nominally served in only some of them.” (Dis. Opn. 3.)

Justice Lie criticized the majority’s conclusion that the relevant statutory language is ambiguous. (Dis. Opn. 3.) In her view, the majority incorrectly reasoned that the statutory term “proceedings’ might be the equivalent of a coordinated hearing, in which multiple cases corresponding to one defendant’s unrelated offenses ‘are resolved and sentenced together.” (Dis. Opn. 3.) She observed that “proceedings” has a well-known and accepted meaning that is broader than “hearings” and which “turns on the operative charging documents that allege the criminal conduct for which the People seek punishment, not on a purely procedural decision to coordinate scheduling for multiple actions.” (Dis. Opn. 3-4.) Given that definition, “[p]resentence custody is not ‘attributable to’ hearings, only to the cases heard.” (Dis. Opn. 4.)

In Justice Lie’s view, “[c]oordination of Cofer’s cases for sentencing ensured only that the trial court would credit him in each case with the days he was in custody for that particular case, even though those same days were also credited in another case or two or three—because his custody was attributable to each case to be credited.” (Dis. Opn. 4-5.) And “nothing in the statute authorizes more than this.” (Dis. Opn. 5.)

Justice Lie acknowledged that the award of custody credits under this rule could be seen in some cases as turning on “a ‘purely technical’ distinction in custodial status.” (Dis. Opn. 5.)

But she reasoned that this Court’s decisions had opted for a “strict causation” rule over a “relaxed causation” standard: *Joyner* expressly rejected “an equalization-of-concurrent-terms rationale”; *Bruner* “announced . . . that section 2900.5 ‘is intended only to prevent inequalities in total confinement among defendants, each similarly sentenced in a *single proceeding*’ and not to maximize presentence credits across multiple proceedings”; and, since those decisions were issued, the Legislature “has perceived no need to clarify the breadth of ‘proceeding’ or ‘related to the same conduct’ as used in section 2900.5.” (Dis. Opn. 5-6.)

Nor did Justice Lie find support for any “looser interpretation” in other cases analyzing section 2900.5. (Dis. Opn. 6.) To the contrary, she cited the *Marquez* opinion’s discussion of unavoidable dead time as “particularly telling.” (Dis. Opn. 7.) She noted that in that case, the Court observed that if no hold had been placed on the defendant for the unrelated case in a different county from where he was being held, he would have been left “with no sentence against which credit for that period could be applied” once the charges in the initial county were dismissed. (Dis. Opn. 7.) This “made clear that for presentence custody to be attributable to any one case, that case must be at least a *contributing* cause of a defendant’s restraint when the strict causation rule of *Joyner* and *Bruner* does not apply.” (Dis. Opn. 7.)

ARGUMENT

A DEFENDANT MUST HAVE ACTUALLY BEEN IN PRESENTENCE CUSTODY ON A CASE TO BE ENTITLED TO CUSTODY CREDIT IN THAT CASE

The issue in this case is resolved by a straightforward application of section 2900.5's plain language, as confirmed by extrinsic indicia of legislative intent. The statute permits presentence custody credit against a sentence only when the custody is "attributable to proceedings related to" the conduct leading to the conviction for which the defendant is sentenced. (§ 2900.5, subd. (b).) Regardless of whether multiple cases are jointly resolved and given concurrent sentences at a single hearing, credit is afforded in a case only when the defendant's custody results from the offense in that case. The statute does not authorize custody time attributable to only one case to be credited against the sentence in a different case that is based on unrelated conduct. The trial court below thus correctly awarded credit individually in each of appellant's unrelated cases, even though they were resolved at a consolidated hearing.

A. The plain language of section 2900.5, subdivision (b), does not permit presentence custody time attributable to one case to be credited against a sentence in an unrelated case

"The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." (*People v. Skiles* (2011) 51 Cal.4th 1178, 1185.) In attempting to effectuate the Legislature's intent, reviewing courts "assign the statutory language its plain and commonsense meaning" (*Marquez, supra*, 30 Cal.4th at pp. 19-20), which is "generally the most reliable indicator of legislative

intent and purpose” (*People v. Cochran* (2002) 28 Cal.4th 396, 400; see also *People v. Valladolid* (1996) 13 Cal.4th 590, 597 [the “first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning”]). “If the statutory language is not ambiguous, [courts] presume the Legislature meant what it said.” (*Marquez*, at p. 20.)

The statutory language here is unambiguous. Section 2900.5, subdivision (b), authorizes presentence custody credit “only where the custody to be credited is *attributable to proceedings related to the same conduct* for which the defendant has been convicted.” (§ 2900.5, subd. (b), italics added.) In other contexts, this Court has construed that statutory language according to its “usual, ordinary, and common sense meaning” (*Rojas, supra*, 23 Cal.3d at p. 155), adhering to an interpretation that permits presentence custody to be credited only when it was caused by the conduct in the case in which credit is sought. Indeed, in situations where custody was caused by more than one case against the defendant, the Court has adopted a rule of “strict causation”—that is, the conduct leading to the sentence against which credit is sought must have been “the *true and only unavoidable basis* for the earlier custody.” (*Bruner, supra*, 9 Cal.4th at p. 1192.) On the other hand, the Court has also acknowledged that, when multiple crimes are prosecuted in one case and concurrent sentences are imposed, “presentence custody is credited against all.” (*Id.* at p. 1192, fn. 9; see also *Jacobs, supra*, 220 Cal.App.4th at pp. 79-81.) In that situation, all of the

custody is attributable to conduct related to the single proceeding.

This Court’s decisions interpreting section 2900.5 do not suggest that a case may be credited for custody that is solely attributable to a different case (and the underlying conduct therein), even if concurrent terms are imposed in the cases at a single sentencing hearing. That makes sense given the plain meaning of the statutory text. The ordinary meaning of “attributable to” is caused by or results from. (*Olive v. General Nutrition Centers, Inc.* (2018) 30 Cal.App.5th 804, 816, citing Webster’s 3d New Internat. Dict. (1993) p. 141, col. 3 & p. 142, col. 1.) While the ordinary meaning of “proceedings” can vary, “[p]roceedings” in this context has been defined as “all proceedings authorized or . . . instituted in a court . . . [for] the enforcement of a remedy.” (*People v. Williams* (1992) 10 Cal.App.4th 827, 833-834 [quoting the definition of “legal proceedings” in Black’s Law Dict. (6th ed. 1990) p. 896, col. 2].) This definition is consistent with the Penal Code’s definition of “criminal action” as “[t]he proceeding by which a party charged with a public offense is accused and brought to trial and punishment.” (§ 683; see also Code Civ. Proc., § 22 [“An action is an ordinary proceeding in a court of justice by which one party prosecutes another for . . . the punishment of a public offense”].) Lastly, “related” ordinarily means “having relationship[;] connected by reason of an established or discoverable relation.” (Webster’s 3d New Internat. Dict. (2002) p. 1916, col. 2; see also

Black's Law Dict., *supra*, p. 1288, col. 1. [defining "related" to mean "Standing in relation; connected; allied; akin"].)

Thus, by section 2900.5, subdivision (b)'s express language, credit is authorized in a case solely for presentence custody resulting from the criminal conduct in that case. Conversely, credit is not authorized where the defendant's custody was not caused by the underlying conduct in the case. The statute "clearly provide[s] that credit is to be given 'only where' custody is related to the 'same conduct for which the defendant has been convicted.'" (*Rojas, supra*, 23 Cal.3d at p. 155.) As applied here, appellant is not entitled to credit against the terms imposed in cases A, B, and C for time he was out of custody on those cases even though he was in custody on cases D and E. Cases A, B, and C, and the offenses underlying those matters, were not the cause of his custody in the latter cases. "Section 2900.5 does not authorize credit where the pending proceeding has no effect whatever upon a defendant's liberty." (*Id.* at p. 156.)

Contrary to the view of the majority below, the relevant statutory language is not ambiguous with respect to its application in the circumstances of this case. The majority reasoned that the statute's "attributable to proceedings" language could be understood to mean that when cases "are resolved and sentenced together," a defendant is entitled to custody credit "for all custody attributable to all conduct in those cases occurring after the defendant's arrest in any given case." (Opn. 8-9.) But that construction changes the plain meaning of the statute by adding language and substituting nonsynonymous words.

Section 2900.5, subdivision (b), does not provide that credit shall be given “for *all* custody attributable to *all* conduct” for which the defendant has been convicted in “*all cases* that are resolved and sentenced together.” (Opn. 8, italics added.) Rather, the statute authorizes credit “*only*” where the custody is caused by the proceedings related “to the *same* conduct for which the defendant has been convicted.” (§ 2900.5, subd. (b), italics added.) “Only” and “same” do not mean “all.” Nor does the statute refer to cases, or proceedings, “resolved and sentenced together.” (Opn. 8.) By adding material terms and concepts that do not appear in the statutory text, the Court of Appeal diverged from the long-settled principle that in construing a statute, a court’s “office is simply to ascertain and declare what the statute contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does. [The court] may not rewrite the statute to conform to an assumed intention that does not appear in its language.” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253.)

As Justice Lie correctly explained in her dissent below, the fact that multiple cases are resolved together and concurrent terms are imposed in each at the same hearing does not introduce ambiguity about the application of section 2900.5. (Dis. Opn. 3-5.) The term “proceeding” is broader than the term “hearing” and “turns on the operative charging documents that allege the criminal conduct for which the People seek punishment, not on a purely procedural decision to coordinate scheduling for multiple actions.” (Dis. Opn. 3-4, citing cases.) The joint resolution of

multiple cases and their coordination for sentencing does not transform those separate cases into a single legal matter such that they are all “related to the same conduct for which the defendant has been convicted.” (§ 2900.5, subd. (b).) Each criminal case, or proceeding, resulting in a conviction entitles the prosecution to “the enforcement of a [separate] remedy” (*Williams, supra*, 10 Cal.App.4th at p. 833) based on the defendant’s underlying conduct, and concurrent terms remain independent from each other (*In re Reeves* (2005) 35 Cal.4th 765, 773; see also *People v. Nunez* (2008) 167 Cal.App.4th 761, 766 [“concurrent terms retain their separate identities for sentencing”]).

This Court discussed the separate nature of criminal cases resolved by way of a consolidated hearing in *People v. Soria* (2010) 48 Cal.4th 58. There, the Court of Appeal found ambiguity in a statute requiring a restitution fine “in every case where the sentence includes a period of parole” and “held that when several separately filed cases are disposed of at a single hearing under a plea bargain, the cases have been ‘effectively consolidated’ and only one set of fines may be imposed.” (*Id.* at pp. 60-61, alterations omitted.) The Court of Appeal determined that “the resolution of multiple charges in a single plea bargain amounts to an ‘effective consolidation.’” (*Id.* at p. 63-64.)

This Court disagreed, saying, “The Court of Appeal found the statutory term ‘in every case’ to be ambiguous as applied to a plea bargain resolving separately filed charges. The court strayed off course at this initial step. When separate pleas are

entered in separately charged cases, ‘every case’ plainly means each case filed against the defendant.” (*Soria, supra*, 48 Cal.4th at pp. 62-63.) Moreover, “[u]nconsolidated cases resolved jointly by plea bargain remain formally distinct for purposes of sentencing under” certain sentencing provisions. (*Id.* at p. 64.)

Here, too, the Court of Appeal “strayed off course” when it viewed the statutory language as ambiguous and treated multiple, unrelated cases as a single “proceeding” for purposes of section 2900.5. (*Soria, supra*, 48 Cal.4th at p. 62.) The phrase “attributable to proceedings related to the *same* conduct” in section 2900.5, subdivision (b) (*italics added*), is as unambiguous as “every case” in *Soria*. The joint resolution of multiple cases does not transmute the cases into a single proceeding or make the custody time in each “related to the same conduct.” (§ 2900.5, subd. (b).) “When several cases are resolved by a single plea bargain in which the defendant enters separate pleas, it is plain that there is one bargain but multiple cases.” (*Soria*, at p. 65.)

Nor is it significant that the Legislature used the plural “proceedings” in section 2900.5, subdivision (b), rather than the singular. In the Penal Code, “[w]ords used in the singular number includes the plural, and the plural the singular.” (§ 7, subd. (a); see *People v. Frahs* (2020) 9 Cal.5th 618, 634 [the Legislature “is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted”].) This Court has understood the term “proceedings” in section 2900.5, subdivision (b) accordingly. (See, e.g., *Bruner, supra*, 9 Cal.4th at p. 1190 [statute’s purposes are “concerned with equalizing the

treatment of different individuals each convicted in a *single proceeding* of the same offense or offenses”]; *Marquez, supra*, 30 Cal.4th at p. 20 [using the phrase, “the Monterey County proceedings,” to describe the defendant’s single case pending in Monterey County].)

While the ordinary meaning of “proceedings” can vary depending on the circumstances (compare, e.g., Evid. Code, § 901 with Evid. Code, § 903), when that term is viewed within the context of section 2900.5, subdivision (b), it plainly does not mean “sentencing hearing” (or some other procedural event). (See *People v. Rizo* (2000) 22 Cal.4th 681, 685 [statutory language is “construed in the context of the statute as a whole and the overall statutory scheme”].) The statute authorizes credit “only where the custody . . . is attributable to proceedings related to the same conduct for which the defendant has been convicted.” (§ 2900.5, subd. (b).) A “hearing” does not cause an individual to be convicted based on his or her conduct; a criminal action, or case, does.

Thus, custody must be attributable to conduct relating to a case before it can be credited against a sentence in that case under section 2900.5. The global disposition of appellant’s separate criminal cases at a single sentencing hearing did not retroactively “expand the bases” of his presentence confinement such that he was entitled to credit in cases A, B, and C for the custody solely caused by cases D and E and his underlying conduct therein. (Dis. Opn. 2.)

B. Extrinsic evidence of legislative intent confirms that presentence custody time attributable to one case is not credited against a sentence in an unrelated case under section 2900.5

In addition to the legislative intent reflected in the text of section 2900.5, extrinsic evidence of legislative intent also shows that presentence custody solely attributable to one case is not credited against a concurrent sentence in a different, unrelated case even when the cases are resolved jointly and the sentences are imposed at a single hearing. (See *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1369 [when statutory text is ambiguous, courts may look to extrinsic interpretive aids, including ostensible objectives to be achieved and legislative history].)

The legislative history of section 2900.5 demonstrates that the statute was intended to authorize credit against a sentence in a particular case for presentence custody that directly resulted from the defendant's underlying conduct in that case, not to assign credit from one case to another. At enactment, the statute authorized "credit *only* for time spent in jail *as a result of charges that arose from the same criminal acts* supporting the offense for which [the defendant] was convicted." (Assem. Com. on Criminal Justice, Bill Dig., Assem. Bill No. 1237, *supra*, as amended May 13, 1971, italics added.) Former subdivision (b) of section 2900.5 provided that "credit shall be given only where the custody to be credited is attributable to charges arising from the same criminal act or acts for which the defendant has been convicted." (Stats. 1971, ch. 1732, § 2, p. 3686.) When subdivision (b) was amended to the language at issue here—"credit shall be given only where the custody to be credited is attributable to proceedings related to

the same conduct for which the defendant has been convicted” (§ 2900.5, subd. (b), as amended by Stats. 1976, ch. 1045, § 2, p. 4666)—the change was intended simply to eliminate the limitation of credit from that between arrest and sentencing and to expand authorized credit to include “time spent in the California Rehabilitation Center” and in a hospital. (Sen. Com. on Judiciary, Criminal Sentencing-Credits, Assem. Bill No. 3653, *supra*, as amended Aug. 13, 1976, p. 5; Alan Sumner, Mem. to Mike Ullman, Sept. 9, 1976, p. 1).⁹

The legislative history provides no basis to conclude that the amendment was intended to expand credit to include presentence custody wholly *unrelated* to the case and the defendant’s *conduct* therein (cases A, B, and C here) or that it was intended to afford a defendant sentenced to concurrent terms in multiple cases at a single hearing *greater* entitlement to credit on that basis. “[T]he statute is intended only to prevent inequalities in total confinement among defendants, each similarly sentenced in a *single proceeding*, which inequalities arise solely because one defendant suffered presentence confinement while another did not.” (*Bruner, supra*, 9 Cal.4th at p. 1191.)

This understanding holds true when considering the 1978 legislation, which amended subdivision (b) of section 2900.5 to limit credit on consecutive sentences. (Stats. 1978, ch. 304, § 1, p. 632; Leg. Counsel’s Dig., Sen. Bill No. 1507, 1 Stats. 1978,

⁹ In the Court of Appeal, appellant acknowledged that the change to “proceedings” was “intended to expand credits to encompass a CRC detention.” (Appellant’s Letter Brief (Apr. 1, 2024) 4.)

supra, Summary Dig., p. 74.) As this Court has recognized, “there is no indication the 1978 amendment was concerned with concurrent sentences *for unrelated conduct imposed in multiple proceedings*. By its terms, the amendment does no more than clarify that when consecutive terms are imposed for multiple offenses in a single proceeding, only one of the terms shall receive credit for presentence custody, while leaving undisturbed the accepted principle that when concurrent sentences are imposed at the same time, presentence custody is credited against all.” (*Bruner, supra*, 9 Cal.4th at p. 1192, fn. 9, italics added and omitted.)¹⁰

It is true that section 2900.5’s requirement that creditable custody be “attributable to proceedings related to the same conduct” for which the defendant is convicted may result in different credit awards depending on whether separate cases are joined before resolution. (See *Atilas, supra*, 33 Cal.3d at p. 813.) But this Court in *Joyner* dismissed that concern as a reason to depart from the statutory language, finding no convincing support for an “equalization-of-concurrent-terms rationale” when the concurrent terms are imposed in separate criminal actions. (*Joyner, supra*, 48 Cal.3d at pp. 494-495.) “There is no persuasive indication that section 2900.5 was intended to achieve the goal of

¹⁰ Because concurrent sentences are independent but run at the same time (cf. *In re Roberts* (1953) 40 Cal.2d 745, 749), awarding credit against each concurrent term for the actual custody time in the case furthers the legislative objective of “provid[ing] equitable treatment for one held in pretrial custody on mere charges of crime” (*Bruner, supra*, 9 Cal.4th at p. 1192, italics omitted).

making the net time served on separately imposed concurrent terms equal to the net time served on concurrent terms imposed at one time *in a single proceeding.*” (*Id.* at p. 494, italics added.) Rather, section 2900.5’s “purposes are concerned with equalizing the treatment of different individuals each convicted in a single proceeding of the same offense or offenses.” (*Ibid.*)

Moreover, as Justice Lie explained in her dissent below, a defendant charged in separate cases for unrelated misconduct in the same jurisdiction can maximize presentence custody credit under a plain reading of the statute that authorizes credit in a case only for the presentence custody in that case. Appellant, for example, could have requested remand in cases A, B, and C when he realized that he was unable to secure his release in cases D and E. (Dis. Opn. 2.)¹¹ Had he done so, he would have received credit for his simultaneous presentence custody in cases A, B, and C, too. (*Jacobs, supra*, 220 Cal.App.4th at p. 84.) Or he could have stipulated to the prosecution’s motion to consolidate rather than opposing it. (CT 36-39.) Further, appellant may have been able to negotiate a disposition that maximized the presentence custody credit he received. (Cf. Dis. Opn. 3, fn. 2.) In this situation, appellant faced “choice[s] between . . . courses of action that . . . bore potential costs and rationally attractive benefits. [They] might have been . . . hard choice[s]. But

¹¹ As the dissent observed (Dis. Opn. 3), appellant seemingly understood that he could not receive credit for his out of custody time in cases A, B, and C given his assertion at sentencing that he requested his “bail to be revoked when [he] came in” in February (RT 10).

litigants every day face difficult decisions.” (*Currier v. Virginia* (2018) 585 U.S. 493, 503 [regarding the defendant’s choice to agree to severance of the charges and two trials].)

Thus, appellant’s custody status in his various cases was not “purely technical” (Opn. 9; see also Dis. Opn. 5), but the product of how the separate proceedings unfolded in light of the court’s rulings and the parties’ litigating positions. The distinction in custody status among appellant’s several cases also mattered in practical terms. Had appellant been released in cases D and E or had those cases been dismissed, he would not have had to stay in jail on cases A, B, and C given that he was out of custody on them. (See Opn. 10 [“some defendants who are arrested while released on bail may seek to retain their on-bail status in an earlier case in the hope of finding sufficient resources to post bail in a later-filed case or cases”].)

Nor is an interpretation assigning custody credit from one case to another required by the legislative goal of eliminating unequal treatment between defendants who are able to afford bail and those who are not. (See Opn. 10; see also *Kunath, supra*, 203 Cal.App.4th at p. 911.) That same concern was raised by the dissent in *Joyner*. (*Joyner, supra*, 48 Cal.3d at pp. 496, 500 (dis. opn. of Broussard, J.)) But the Court nonetheless adhered to the strict causation standard it had established for awarding credit in a dual-cause situation, while cautioning that the equalization goal does not mean that section 2900.5 should be interpreted to require that the net time served on concurrent terms separately

imposed in multiple cases always equal the net time served had the terms been imposed in the same case. (*Id.* at pp. 494-495.)

In the present situation, the equalization rationale similarly does not warrant a departure from the statute's plain meaning. Given the options available to a defendant to maximize custody credit when facing multiple cases, it is questionable whether any disparity in treatment may be attributable solely to a defendant's indigency. And that is especially true after *In re Humphrey* (2021) 11 Cal.5th 135, which held that in setting bail, a court must consider an arrestee's ability to pay and "may not effectively detain the arrestee 'solely because' the arrestee 'lacked the resources' to post bail." (*Id.* at p. 143.) Thus, "individuals who [cannot] afford bail on additional cases" (Opn. 10), such as appellant, can now challenge the imposition of bail under *Humphrey*, which greatly diminishes the likelihood of dual custody status and any ensuing inequality based on custody credit.

But even if some disparities might nonetheless arise, that is a product of "the limited purposes of the credit statute itself." (*Bruner, supra*, 9 Cal.4th at p. 1193.) As this Court has acknowledged, in interpreting section 2900.5, "any rule or combination of rules is likely to produce some incongruous results and arguable unfairness when compared to a theoretical state of perfect and equal justice." (*Joyner, supra*, 48 Cal.3d at p. 495.) Indeed, the approach of the majority below would result in its own disparities. For example, depending on which cases are dismissed, the majority's construction of section 2900.5,

subdivision (b), would mean that a defendant with multiple cases pending in a single jurisdiction where the prosecution agrees to dismiss some of the cases in exchange for the defendant's guilty plea in others could be worse off than a defendant who pleads guilty in all of the pending cases. Here, under the majority's holding, if the prosecution as part of the plea bargain agreed to the dismissal of cases D and E, appellant presumably would *not* be entitled to credit for his presentence custody in those cases against the terms imposed in cases A, B, and C because no sentence would be imposed on cases D and E at the sentencing hearing. (See Opn. 10.)

The goal in construing section 2900.5 is to provide “a construction which is faithful to its language, which produces fair and reasonable results in a majority of cases, and which can be readily understood and applied by trial courts.” (*Joyner, supra*, 48 Cal.3d at p. 495.) The interpretation that best accords with the plain language of the statute—assigning credit in each unrelated case for the presentence custody attributable to that case, even when multiple cases are jointly resolved and sentenced at a single hearing—fulfills those goals.

The majority below departed from the plain meaning of section 2900.5 based on its view of a “fair and reasonable” way to calculate custody credit. (Opn. 9.) But a court's role is “not to establish policy,” which is the job of the Legislature. (*Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132, 1140, superseded by statute on other grounds as stated in *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1164,

fn. 3.) Rather, in interpreting statutes, courts “follow the Legislature’s intent, as exhibited by the plain meaning of the actual words of the law, whatever may be thought of the wisdom, expediency, or policy of the act.” (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632, internal quotation marks omitted.) As the dissent observed, “[t]he Legislature could reasonably have disagreed with” this Court’s decisions in *Joyner* and *Bruner*, “[b]ut in the intervening decades [it] has perceived no need to clarify the breadth of ‘proceeding’ or ‘related to the same conduct’ as used in section 2900.5.” (Dis. Opn. 6.) The plain meaning of the statute as currently written resolves appellant’s case, and whether any change in approach under section 2900.5 may be warranted is for the Legislature to decide.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

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January 16, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached OPENING BRIEF ON THE MERITS uses a 13 point Century Schoolbook font and contains 10,541 words.

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January 16, 2025

SF2022401590

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No.: **S286297**

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Beverly Wong
Declarant

/s/ Beverly Wong
Signature

STATE OF CALIFORNIA
Supreme Court of California

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