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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM JAMES LANDRUM,

Defendant and Appellant.

A134885

(Sonoma County  
Super. Ct. No. SCR603043)

William James Landrum appeals from a judgment upon his plea of no contest to assault with a deadly weapon, to wit, a tire iron (Pen. Code<sup>1</sup>, § 245, subd. (a)(1)). Defendant also admitted that he committed the offense in association with a criminal street gang (§ 186.22). He contends that he is entitled to additional presentence conduct credits based on the recent amendment to section 4019, and that the court's failure to apply the amended statute to him violates his equal protection rights. We affirm.

**FACTUAL BACKGROUND**

On October 31, 2011, an information was filed charging defendant and five co-defendants with six felonies including mayhem (§ 203), four counts of assault with a deadly weapon, and active participation in a criminal street gang (§ 186.22). The information further alleged that the mayhem and assault offenses were serious felonies (§ 1192.7, subd. (c)(28)) and that they were committed to further a criminal street gang. The charges stemmed from an incident on May 22, 2011, in which defendant and his

<sup>1</sup> All further statutory references are to the Penal Code.

fellow gang members attacked two men at a Shell gas station at 2005 Guerneville Road in Sonoma County. One or more of the defendants yelled “Norte” during the attack. The police viewed videotape footage obtained from the scene and identified defendant and several co-defendants who were involved in the assault to be Norteno gang members.

On December 21, 2011, defendant pled no contest to assault with a deadly weapon and admitted that the offense was committed for the benefit of, at the direction of, or in association with a criminal street gang. He acknowledged that the assault offense was a strike conviction and that he would be sentenced to a stipulated term of eight years in state prison.

The sentencing hearing was held on February 3, 2012. The court sentenced defendant to the midterm of three years for the assault and imposed a consecutive five year term for the gang enhancement. In another pending matter, Case No. SCR593307, a case in which defendant admitted trespassing with a gang enhancement and misdemeanor resisting arrest, the court imposed a concurrent three year term.

The court awarded credits of 241 actual days and 120 conduct days for a total of 361 days in the present matter. In Case No. SCR593307, the court awarded defendant credits of 297 actual days and 296 conduct days for a total of 593 days. The court rejected defendant’s claim that he was entitled to day-for-day credits in the present case, because the offense was committed on May 22, 2011.

## **DISCUSSION**

Defendant seeks to benefit from the recent amendment to section 4019 which increased conduct credit for presentence confinement for defendants convicted of serious or violent felonies. Effective September 21, 2011, section 4019 was amended to provide that two days of presentence conduct credits would be awarded for every two days of presentence time served. (§ 4019, subd. (f).) The statute, however, applies prospectively only “to prisoners who are confined to a county jail . . . for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by prior law.” (§ 4019, subd. (h).) Under the prior law, there were conduct credit restrictions for persons with prior serious or violent felony

convictions so that these defendants were eligible only for conduct credits at a rate of two days for every four days of actual custody time. (Former § 4019, subs. (b), (c), & (f), Stats. 2010, ch. 426, § 2, eff. Sept. 28, 2010.) Since defendant's offenses were committed on May 22, 2011, he is ineligible for the enhanced conduct credits.

Defendant contends that the court's failure to apply the amended version of section 4019 violates his rights to equal protection. He argues that he is similarly situated with all prison inmates with respect to the statutory right to earn conduct credits for time spent in jail.

Defendant acknowledges that Division One of this District rejected his equal protection argument in *People v. Borg* (2012) 204 Cal.App.4th 1528, 1535-1539, review granted July 18, 2012, S202328. The Sixth District reached the same conclusion in *People v. Olague* (2012) 205 Cal.App.4th 1126, 1136, review granted August, 8, 2012, S203298. The California Supreme Court ordered that action in both cases be deferred pending the finality of its decision in *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*)<sup>2</sup>. (*Borg, supra*, 2012 Cal. LEXIS 7042; *Olague, supra*, 2012 Cal. LEXIS 7379.)

In *Brown*, the Court addressed an equal protection challenge to a 2009 amendment to section 4019, operative on January 25, 2010, which increased the number of presentence conduct credits available to eligible defendants. (*Brown, supra*, 54 Cal.4th at p. 318.) The Court rejected the equal protection challenge to the statute's amendment, concluding that the two classes of inmates—those who committed offenses before the operative date of the statute and those who offended after the statute became effective—were not similarly situated. “[T]he important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows.” (*Brown, supra*, 54

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<sup>2</sup> The California Supreme Court denied the petition for rehearing on September 12, 2012 and modified the opinion. The modification does not affect our conclusion here. (*Brown* (2012) 55 Cal.4th 568a.)

Cal.4th at pp. 328-329.) The Court therefore held that the 2009 amendment applied prospectively “meaning that qualified prisoners in local custody first became eligible to earn credit for good behavior at the increased rate beginning on the statute’s operative date.” (*Id.* at p. 318.)

The *Brown* Court’s reasoning applies with equal force to the prospective-only application of the current version of section 4019. The Legislature’s clear intent was to have the new presentence credit provisions apply prospectively only to those defendants who committed crimes on or after October 1, 2011. (§ 4019, subs. (f), (h); *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1553 [holding that prospective-only application of amended § 4019 did not violate equal protection].) Accordingly, we conclude that the court correctly calculated defendant’s presentence credits.

**DISPOSITION**

The judgment is affirmed.

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RIVERA, J.

We concur:

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RUVOLO, P. J.

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SEPULVEDA, J. \*

\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.