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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

LANCE ELLIOT WILLIAMS,

Defendant and Appellant.

B231581

(Los Angeles County  
Super. Ct. No. LA061501)

APPEAL from a judgment and order of the Los Angeles Superior Court,  
Elizabeth Lippit, Judge. Affirmed and remanded with directions.

John L. Staley, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Victoria Wilson and  
Seth P. McCutcheon, Deputy Attorneys General, for Plaintiff and Respondent.

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Lance Elliot Williams appeals from a judgment and post-sentence order denying his motion for additional conduct credits based on the newly amended Penal Code section 4019.<sup>1</sup> We affirm, but remand for further proceedings.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In September 2009, Williams was charged by information with two counts of stalking (§ 646.9, subd. (b), counts 1 and 4) and two counts of making a criminal threat (§ 422, counts 2 and 3) in or about March 2009. As to counts 1, 2, and 3, the information also alleged that Williams had suffered one prior serious or violent felony conviction within the meaning of the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). Represented by private counsel, Williams pleaded not guilty and denied the special allegation.

In February 2010, the trial court relieved Williams’s retained attorney as counsel of record, and appointed the public defender’s office to represent him. On March 29, 2010, the trial court granted Williams’s request to represent himself (*Faretta v. California* (1975) 422 U.S. 806, 819 [95 S.Ct. 2525, 45 L.Ed.2d 562]) and relieved the public defender’s office as counsel of record.

On June 29, 2010, the trial court declared a doubt as to Williams’s mental competence under section 1368. Criminal proceedings were suspended, and Williams was ordered examined by a court-appointed mental health expert.

At some point, the trial court reappointed the public defender’s office to represent Williams, but then relieved the public defender’s office and appointed the alternate public defender as counsel of record due to a conflict of interest. In August 2010, after some discussion with counsel, the trial court found Williams competent to stand trial, set aside section 1368 proceedings, and reinstated criminal proceedings. In accordance with the plea agreement, on January 10, 2011, the trial court sentenced Williams to concurrent

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

three-year state prison terms.<sup>2</sup> The court calculated Williams’s presentence custody credits according to a now superseded version of section 4019. That section, as it read in 2009, allowed prisoners in local custody to be deemed to have served six days for every four days of actual confinement. (Former § 4019, subds. (b), (c), (f) & (g); Stats. 1982, ch. 1234, § 7, p. 4553 [former § 4019, subd. (f)].) Williams was awarded 1,010 days of presentence custody credits (673 actual days and 337 days of conduct credits). Williams was ordered to pay an \$80 court security fee, a \$60 criminal conviction assessment, a \$50 lab fee, and a \$600 restitution fine. The court imposed and suspended a parole revocation fine. (§ 1202.45.)

On April 30, 2012, the trial court denied Williams’s motion to modify his presentence custody credits based on an amendment to section 4019 that was expressly applicable to crimes committed on or after its effective date of operative October 1, 2011 and allowed four days to be deemed served for every two days of actual confinement. (Stats. 2011, ch. 15, § 482, Stats. 2011-212, ch. 12, § 35.)

## DISCUSSION

### 1. *Williams’s Presentence Custody Credits Were Properly Calculated*

Williams asserts he is entitled to an additional 336 days of conduct credits based on the newly amended section 4019, even though he was sentenced prior to October 1, 2011. Specifically, Williams contends: (1) the amendment to section 4019 applies retroactively, despite its express language, and (2) the denial of the additional credits violates the equal protection clause.

*People v. Brown* (2012) 54 Cal.4th 314 (*Brown*) disposes of Williams’s claims. In *Brown*, the California Supreme Court determined that an earlier version of section 4019 applied prospectively only, “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.) *Brown* reasoned that statutory construction did

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<sup>2</sup> Williams also admitted violating probation on two misdemeanor convictions. The trial court revoked and terminated probation and imposed a two-year concurrent sentence.

not require retroactive application: “The statute contains no express declaration that increased conduct credits are to be awarded retroactively, and no clear and unavoidable implication to that effect arises from the relevant extrinsic sources, i.e., the legislative history.” (*Id.* at p. 320.)<sup>3</sup>

*Brown* also decided that prospective application of the earlier version of section 4019 did not violate the equal protection clauses of the federal and state Constitutions. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7, subd. (a).) “[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 Cal.4th at pp. 328-329.)

We see no reason the rationale of *Brown* should not apply with equal force to the newly amended section 4019. (See *People v. Lara* (2012) 54 Cal.4th 896, 906, fn. 9.) Williams’s crimes were committed in 2009, and he was sentenced in January 2011, well before the amendment’s effective date of October 1, 2011. Accordingly, we reject Williams’s claim he is entitled to additional presentence custody credits by reason of retroactive application of the latest amendment to section 4019.

## 2. The Trial Court Failed to Dismiss Williams’s Prior Strike Conviction

The information alleged that in 1995 Williams had suffered a serious or violent juvenile adjudication for assault with a firearm (Pen. Code, § 245, subd. (a)(2)) (L.A. County Sup. Ct. No. PJ07331) making him eligible for sentencing under the Three Strikes law with respect to count 1, 2 and 3. At a January 11, 2010 pretrial hearing, the prosecutor advised the trial court that because of the age of Williams’s juvenile court file, she and Williams’s retained counsel were having difficulty obtaining it from the clerk of the court.

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<sup>3</sup> In contrast to the prior statute, the Legislature expressly stated its intent that the new amendment not be applied retroactively.

On March 29, 2010, Williams's appointed counsel told the trial court that the juvenile court file had not yet been found, and there was a question as to whether the juvenile adjudication related to Williams or to another minor arrested with Williams.

At a pretrial hearing on April 12, 2010, at which Williams was representing himself, the prosecutor informed the trial court the original plea offer was four years for making a criminal threat or double the two-year-lower term under the Three Strikes law. However, she would be willing to offer a term of four years, without the strike. Williams rejected the offer. The prosecutor also advised the juvenile court records still could not be found.

When Williams entered his negotiated plea to counts 3 and 4, there was no mention of the prior strike allegation as to count 3. The trial court did not include the prior strike allegation in calculating Williams's aggregate term of imprisonment on that count. Rather the trial court told Williams he was facing a maximum state prison sentence of seven years, consisting of three years for making a criminal threat and four years for stalking.

At sentencing, the trial court imposed the agreed upon sentence and granted the prosecutor's motion to dismiss the remaining charges, counts 1 and 2. Although it appears the prosecution did not intend to proceed on the prior strike allegation, it should have been dismissed. (See § 667, subd. (f)(2).)

#### **DISPOSTION**

The judgment is affirmed. The matter is remanded to the trial court to dismiss the prior strike allegation as to count 3, making a criminal threat. The court is ordered to prepare a new abstract of judgment reflecting the dismissal of the prior strike allegation and to forward it to the Department of Corrections and Rehabilitation.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.