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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN JENKINS,

Defendant and Appellant.

2d Crim. No. B236613  
(Super. Ct. No. PA059024-01)  
(Los Angeles County)

Steven Jenkins appeals a post-sentence order denying his motion for increased conduct credit pursuant to former Penal Code section 4019.<sup>1</sup> We affirm. (*People v. Brown* (2012) 54 Cal.4th 314 [former section 4019 applies prospectively].)

*FACTS AND PROCEDURAL HISTORY*

On October 16, 2008, Jenkins pleaded nolo contendere to committing vehicular manslaughter while intoxicated, driving while intoxicated, and driving with a suspended or revoked driver's license. (§ 191.5, subd. (a); Veh. Code, §§ 23152, subd. (a), 14601.1, subd. (a).) The crimes concerned a fatal accident Jenkins caused on April 5, 2007, while driving under the influence of heroin.

The trial court sentenced Jenkins to a 10-year prison term, imposed various fines and fees, and ordered restitution to the victim's family. The court also awarded

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

Jenkins 799 days of presentence custody credit (533 actual days plus 266 conduct credit days).

On August 31, 2011, Jenkins filed a motion to modify his presentence custody credit pursuant to a now superseded version of section 4019. That section, effective January 25, 2010, temporarily increased the rate at which prisoners in local custody could earn conduct credit for good behavior. It provided: "It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody." (§ 4019, subd. (f).) The trial court summarily denied the motion.

Jenkins appeals and asserts that he is entitled to an additional 266 days of conduct credit. Specifically, he contends that: 1) former section 4019 applies retroactively, and 2) denial of increased credit violates the constitutional command of equal protection of the law.

#### DISCUSSION

In *People v. Brown, supra*, 54 Cal.4th 314, our Supreme Court decided the same issues that Jenkins raises here. *Brown* determined that former 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 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.)

*Brown* also decided that prospective application of former section 4019 does 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."  
(*People v. Brown, supra*, 54 Cal.4th 314, 328-329.)

Here Jenkins was sentenced and committed to prison on October 16, 2008, long before the January 25, 2010 effective date of former section 4019. He is not entitled to retroactive application of that section. (*People v. Brown, supra*, 54 Cal.4th 314, 320.)

The order is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Dalila C. Lyons, Judge

Superior Court County of Los Angeles

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