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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.

SANDRA MARIE FRESCAS,

Defendant and Appellant.

2d Crim. No. B237724
(Super. Ct. No. 2010036499)
(Ventura County)

Sandra Marie Frescas appeals the order revoking her probation following her guilty plea to identity theft (Pen. Code,¹ § 530.5, subd. (c)(2)), and her admission that she had served a prior prison term (§ 667.5, subd. (b)). The trial court directed execution of a previously imposed two-year state prison sentence and ordered appellant to serve that term in county jail. Appellant was awarded a total of 180 days presentence custody credit, consisting of 120 days actual custody credit and 60 days conduct credit.

Appellant's sole contention on appeal is that she is entitled to additional conduct credits under the version of section 4019 in effect when she was sentenced on December 1, 2011. She claims that equal protection principles require us to conclude that the new statute applies notwithstanding the express statement that the statute only applies

¹ All further statutory references are to the Penal Code.

prospectively to prisoners confined for crimes committed on or after its effective date of October 1, 2011.² Our Supreme Court recently rejected this very conclusion. (*People v. Lara* (2012) 54 Cal.4th 896, 906, fn. 9; see also *People v. Brown* (2012) 54 Cal.4th 314, 329 [prospective application of the January 25, 2010, amendment to section 4019 does not violate equal protection]; *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1553 [defendants who commit crimes prior to the October 1, 2011, amendment to section 4019 are not entitled to enhanced credits for time served after that date].) We are bound to follow our Supreme Court. (*Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450, 455.) Appellant’s equal protection claim accordingly fails.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

² The current version of section 4019 offers prisoners the opportunity to earn conduct credit for their good behavior at the rate of two days for every two days spent in actual custody. Under this version of the statute, prisoners are considered to have served four days for every two days of incarceration. (§ 4019, subd. (h).) The statute further provides that it “shall apply prospectively and shall apply to prisoners who are confined . . . 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 the prior law.” (*Ibid.*) Under the prior law, which went into effect on September 28, 2010, defendants who are not sentenced to prison are only entitled to two days of presentence conduct credit for every *four* days spent in actual custody. (Stats. 2010, ch. 426, § 2, p. 2088.) This is the statute that applies to appellant, whose crime was committed on October 18, 2010.

Colleen Toy White, Judge
Superior Court County of Ventura

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