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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.

THERESA MARIE CAMPBELL,

Defendant and Appellant.

2d Crim. No. B237733  
(Super. Ct. No. 2011021977)  
(Ventura County)

Theresa Marie Campbell appeals the judgment entered after she pled guilty to petty theft with three or more priors (Pen. Code,<sup>1</sup> § 484, subd. (a)) and admitted serving a prior prison term (§ 667.5, subd. (b)). The trial court sentenced her to four years in county jail and awarded 210 days of presentence custody credit, consisting of 140 actual custody credits and 70 days conduct credit.

Appellant's crime was committed on July 18, 2011, and she was sentenced on November 4, 2011. Her sole contention on appeal is that she is entitled to additional conduct credits under the version of section 4019 that went into effect on October 1, 2011, notwithstanding the Legislature's express statement that the statute only applies to crimes committed on or after the statute's effective date. She claims that equal protection principles compel a retroactive application of the statute. We affirm.

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

When section 4019 was originally enacted in 1976, it offered prisoners the opportunity to earn conduct credit for their good behavior at the rate of two days for every four days spent in actual custody. Under this version of the statute, prisoners were considered to have served six days for every four days they were incarcerated. (See, e.g., *People v. Fares* (1993) 16 Cal.App.4th 954.) Effective January 25, 2010, section 4019 was amended to allow conduct credits to be earned (with exceptions not relevant here) at a "two-for-two" rate, such that prisoners were deemed to have served four days for every two days spent in presentence custody. (Stats. 2010, ch. 426, § 2.) Effective September 28, 2010, the Legislature amended the statute again to restore the original formula. (*Ibid.*) Effective October 1, 2011, the statute was amended yet again to restore "two-for-two" conduct credits for all prisoners. (§ 4019, subs. (b) & (h).) The statute further provides: "The changes to this section enacted by the act that added this subdivision 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.*)

Although appellant's crime was committed on June 18, 2011, she claims the current version of section 4019 must be applied to her retroactively in order to avoid an equal protection violation. Our Supreme Court recently rejected the claim that the Legislature violated equal protection by making the current version of section 4019 expressly prospective. (*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].) Because we are bound to follow our Supreme Court (*Auto Equity Sales, Inc. v.*

*Superior Court* (1962) 57 Cal.2d 450, 455), we must reject appellant's equal protection claim.

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Nancy Ayers, Judge  
Superior Court County of Ventura

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