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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC LENNOX,

Defendant and Appellant.

C068606

(Super. Ct. No. 08F08206)

Defendant Eric T. Lennox pled no contest to second degree burglary (Pen. Code, § 459).<sup>1</sup> The trial court suspended imposition of sentence and placed defendant on five years' formal probation. As a condition of probation, the trial court imposed a one-year county jail term with 115 days' credit for time served.

The trial court subsequently found defendant violated his probation and sentenced him to three years in state prison with 585 days credit, consisting of 144 days' presentence custody, 76 days' presentence conduct, and the 365 days in jail under the probation condition. Following defendant's motion to amend the credits, the trial court

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

modified the award to 653 days -- 365 days served as a condition of probation, 144 days of actual time served, and 144 days of conduct credits.

On appeal, defendant contends he was entitled to additional conduct credits for his 365 days in county jail pursuant to the probation condition. We affirm.

#### BACKGROUND

We dispense with the facts of defendant's crime and his probation violation as they are unnecessary to resolve this appeal.

Defendant entered his plea on September 23, 2009. On November 13, 2009, the trial court suspended imposition of sentence, placed defendant on probation, and ordered him to serve 365 days in county jail with 115 days' credit. In making its order, the trial court stated: "The law does permit an award of conduct and work-time credits up to one-third of the sentence that is imposed by the Court. The jail will determine good-time work-time credits based on Mr. Lennox's behavior."

Defendant was sentenced on the probation violation on May 27, 2011, without a supplemental probation report. The trial court awarded 365 days' credit for the probation sentence, and 144 days' actual and 76 days' conduct credit for his presentence incarceration. Defendant then filed a motion to change the award of credits based on the amendments to section 4019.

Defendant's motion set forth three alternative credit calculations for the trial court: (a) 240 days' actual time and 240 days' conduct credits for the November 2009 incarceration, and 144 days' actual and 144 days' conduct for presentence custody; (b) 365 days' credit for the November 2009 incarceration plus 144 days' actual and 144 days' conduct credit for presentence custody; (c) 240 days' actual and 240 days' conduct credit for the November 2009 incarceration, and 144 days' actual and 76 days' conduct for presentence incarceration.

The trial court held a hearing on defendant's motion and choose option (b), amending the award to 365 days' credit for the jail time under the probation condition,

and 144 days' actual and 144 days' conduct credit for defendant's presentence custody. Defendant did not object to the trial court's ruling.

#### DISCUSSION

Defendant contends he was entitled to additional conduct credits for his 365-day jail sentence pursuant to the January 25 and September 28, 2010, amendments to section 4019. We disagree.

A defendant incarcerated in county jail as a condition of probation can earn conduct credits to reduce his or her incarceration. (§ 4019, subd. (a)(2).) When defendant was ordered to serve the 365-day jail term in November 2009, defendants were entitled to two days of conduct credit for every four days served. (Former § 4019, subds. (b), (c), (f).) Under the January 25, 2010, amendments to section 4019, a defendant was entitled to two days presentence credit for every two days in custody.<sup>2</sup> (Former § 4019, subds. (b), (c), (f).)

According to defendant, he served his 365 days in county jail by spending 244 days in actual custody and accumulating 122 days of conduct credit. Applying the amendments to section 4019, defendant argues that he was entitled to an additional 122 days' credit for the time served, which should be applied against his state prison sentence.

An order granting probation is an appealable order. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421; *People v. Howard* (1965) 239 Cal.App.2d 75, 75-76, 77.) Thus a defendant may appeal an order establishing the rate at which conduct credits are earned during a jail term imposed as a condition of probation. (*People v. Moon* (2011) 193 Cal.App.4th 1246, 1248.)

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<sup>2</sup> The September 28, 2010, amendments applied the accelerated award of credits only to prisoners sentenced to state prison. (See former §§ 2933, subd. (e), 4019.) Since these amendments would not operate to increase defendant's credits, we do not discuss them.

Defendant could have sought additional credits for the jail term in an appeal from the order granting probation. The court’s order stating that defendant could have his 365-day jail term reduced by up to one-third through conduct and work-time credits accurately summarized the conduct credits defendant could earn under section 4019 before the January 25, 2010, amendments. While defendant was placed on probation on November 13, 2009, the law enacting the amendments was signed by the Governor on October 11, 2009 (*People v. Brown* (2012) 54 Cal.4th 314, 318 (*Brown*)), so defendant cannot claim the amendments were unknown to him when he was placed on probation. Before the Supreme Court’s decision in *Brown*, we applied the amendments to section 4019 retroactively, so defendant could have prevailed in an appeal from the probation order. (See *id.* at p. 319.)

“[A] defendant who elects not to appeal an order granting . . . probation cannot raise claims of error with respect to the grant . . . of probation in a later appeal from a judgment following revocation of probation.” (*People v. Ramirez, supra*, 159 Cal.App.4th at p. 1421; *People v. Vest* (1974) 43 Cal.App.3d 728, 731 [same]; *People v. Glaser* (1965) 238 Cal.App.2d 819, 824 [if no appeal taken from order granting probation, a later appeal from judgment entered after revocation can only review fundamental jurisdictional defects].) Because defendant did not appeal from that order granting probation, we are without authority to reach the issue in this appeal.

Defendant’s contention fails even if we were to consider it. In *Brown*, a case decided after briefing was concluded, our Supreme Court held that the January 25, 2010, amendments 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,” and that retroactive application was not required as a matter of equal protection. (*Brown, supra*, 54 Cal.4th at p. 318.)

While the record establishes that defendant was placed on probation on November 13, 2009, there is no indication as to whether defendant earned any conduct credits in

county jail or when he finished serving that term. It is appellant's burden to produce a record supporting a claim of error. (*Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127.) Since the record does not indicate whether defendant spent any part of his 365-day term on or after January 25, 2010, or if he accrued conduct credits during this term, defendant cannot carry his burden of establishing error under *Brown*.

DISPOSITION

The judgment is affirmed.

BLEASE, J.

We concur:

RAYE, P. J.

HULL, J.