

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIUS LEE RUFF,

Defendant and Appellant.

C069408

(Super. Ct. No. CM034768)

Defendant Julius Lee Ruff pled no contest to corporal injury to the parent of one's child (Pen. Code, § 273.5, subd. (a))¹ and admitted a prior prison term allegation (§ 667.5, subd. (b)). The trial court sentenced defendant to five years in state prison and awarded 121 days of presentence credit (81 actual and 40 conduct).

On appeal, defendant contends (1) the trial court erred in relying on a prior serious felony conviction that was neither pled nor proved to reduce his conduct credits, and (2) he is entitled to additional conduct credits pursuant to the Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15, § 482) under equal

¹ Undesignated statutory references are to the Penal Code.

protection principles. Following the California Supreme Court's decision in *People v. Lara* (2012) 54 Cal.4th 896 at page 906, footnote 9 (*Lara*), we reject both contentions. We affirm the judgment.

DISCUSSION²

I

Dismissed Prior Strike Conviction

Defendant contends that the trial court's reliance on a dismissed prior strike conviction to reduce his conduct credits violated the pleading and proof requirements of *People v. Lo Cicero* (1969) 71 Cal.2d 1186 (*Lo Cicero*.) We reject this contention.

A.

Background

The trial court calculated defendant's conduct credits under the September 28, 2010, amendments to sections 4019 and 2933. Under the law in effect at the time, a defendant was entitled to one day of conduct credit for each day of presentence confinement. (Former § 2933.) A defendant with a prior serious felony conviction received two days of conduct credit for every four days spent in presentence custody. (Former §§ 2933, 4019.)

In July 2011, the first information alleged a section 667.5, subdivision (b), prior prison term enhancement, based on a 2009 conviction for burglary (§ 459). The information was amended to omit the prior prison term allegation and to include a prior strike allegation based on the same burglary conviction, now alleged as a conviction for first degree burglary.

At the change of plea hearing, defense counsel asked if the prior strike allegation in the amended information could be changed to a prior prison term allegation. The

² Given the nature of the issues on appeal, only the facts and procedural history relevant to our disposition are recounted.

prosecutor agreed, and defendant pled no contest to the corporal injury charge and admitted the prior prison term allegation in exchange for a dismissal of all other charges and a maximum sentence of five years in state prison. The trial court then asked the prosecutor if, by amending the information to add a prior prison term allegation and omit the prior strike allegation, he was “in a sense dismissing that strike in the interest of justice?” The prosecutor replied, “That’s correct, Your Honor.” Over defendant’s objection that the prior prison term was not pled and proved in the proceeding, the trial court relied on the 2009 burglary conviction to reduce defendant’s conduct credits.

B.

Analysis

In a case decided after briefing was concluded, the California Supreme Court held that a prior conviction does not have to be formally pled and proved in order to limit a defendant’s conduct credits. (*Lara, supra*, 54 Cal.4th at p. 906.) Due process in the award of credits entails “sufficient notice of the facts that restrict [a defendant’s] ability to earn credits and, if he [or she] does not admit them, a reasonable opportunity to prepare and present a defense.” (*Ibid.*)

The prior burglary conviction was alleged in the prior prison term allegation in the first information and was alleged as a prior strike conviction in the amended information. While the prior prison term allegation was substituted for the now dismissed prior strike allegation in the plea agreement, the prior burglary conviction remained in the amended information that formed the basis of the plea.

During the plea colloquy, the trial court asked defendant: “And with regards to the amended special allegation, that you suffered a prior prison term within the meaning of . . . [s]ection 667.5(b); to wit, a conviction of May 7th, 2009, out of Butte County Superior Court, case number CM030834, for a violation of . . . section 459, first degree; do you admit that you suffered that prior conviction?” Defendant replied: “admit.”

First degree burglary is a serious felony. (§ 1192.7, subd. (c)(18).) Defendant was informed of, and admitted to the prior conviction for first degree burglary during the change of plea hearing, satisfying the due process requirements of *Lara, supra*, 54 Cal.4th 896.

II

Prospective Application of Section 4019

Defendant's second contention is based on the October 1, 2011, amendments to section 4019 in the Realignment Act.

The Realignment Act amended section 4019, entitling defendants to two days of conduct credits for every two days of presentence custody. (§ 4019, subds. (b), (c), (f).) The award of credits is not reduced by a defendant's current or prior conviction for a serious felony. This provision applies prospectively to defendants serving presentence incarceration for crimes committed on or after October 1, 2011. (§ 4019, subd. (h).) Defendant's crime was committed before October 1, 2011.

Defendant argues that, despite the express terms of section 4019, "equal protection compels that the amendment to section 4019 effective October 1, 2011 be applied to award [defendant] one-for-one credit." This argument was rejected by the California Supreme Court in *Lara*. (*Lara, supra*, 54 Cal.4th at p. 906, fn. 9.)

In *Lara*, the Supreme Court explained its rejection of defendant's equal protection argument as follows: "As we there [*People v. Brown* (2012) 54 Cal.4th 314, 328-330] explained, "[t]he obvious purpose" of a law increasing credits "is to affect the behavior of inmates by providing them with incentives to engage in productive work and maintain good conduct while they are in prison." [Citation.] "[T]his incentive purpose has no meaning if an inmate is unaware of it. The very concept demands prospective application." (*Brown*, at p. 329, quoting *In re Strick* (1983) 148 Cal.App.3d 906, 913.) Accordingly, prisoners who serve their pretrial detention before such a law's effective

date, and those who serve their detention thereafter, are not similarly situated with respect to the law's purpose. (*Brown*, at pp. 328-329.)” (*Lara, supra*, at p. 906, fn. 9.)

Accordingly, defendant is not entitled to the additional accrual of conduct credits under the October 1, 2011, amendment to section 4019.

DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

RAYE, P. J.

MURRAY, J.