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COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR WALTER RODGERS,

Defendant and Appellant.

C069595

(Super. Ct. No. 11F05132)

Having been charged with welfare fraud (Welf. & Inst. Code, § 10980, subd. (c)(2)) and perjury (Pen. Code, § 118, subd. (a)(2)),¹ defendant pled no contest to welfare fraud, a misdemeanor. The trial court placed defendant on three years' formal probation and ordered defendant to serve 60 days in jail with nine days of presentence credit (seven actual, two conduct).

¹ Undesignated statutory references are to the Penal Code.

On appeal, defendant contends the trial court's failure to award additional conduct credits pursuant to the Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15, § 482) deprived him of equal protection under the law. We modify the credits, but not for the reason defendant asserts.

DISCUSSION²

Defendant committed his offense between August 1, 2007 and July 31, 2010. He was sentenced on August 23, 2011.

The trial court calculated defendant's conduct credits under the September 28, 2010 amendment of the presentence credit law. Under that version, a defendant sentenced to county jail under a grant of probation was entitled to two days of conduct credit for every four days of presentence custody. (Former §§ 2933, 4019 (Stats. 2010, ch. 426); see *In re Marquez* (2003) 30 Cal.4th 14, 25-26 (*Marquez*) [no rounding up when calculating credits].)

The Realignment Act amended the law, effectively entitling defendants to two days of conduct credits for every two days of presentence custody. (§ 4019, subds. (b), (c), (f); *Marquez, supra*, 30 Cal.4th at pp. 25-26.) The award of credits applies to defendants serving county jail time under a grant of probation. (§ 4019, subd. (a)(2).) This provision applies prospectively, for crimes committed on or after October 1, 2011. (§ 4019, subd. (h).)

² The facts of defendant's crime are unnecessary to resolve this appeal.

Defendant argues that the prospective application of the conduct credit provisions of the Realignment Act violates his right to equal protection under the law. This claim has been rejected by the California Supreme Court. (*People v. Lara* (2012) 54 Cal.4th 896, 906, fn. 9.) Applying *Lara*, we reject the basis for defendant's assertion that he is entitled to additional credits.

Nevertheless, defendant is entitled to additional credits. The September 28, 2010 amendment applies only to defendants sentenced for crimes committed on or after the act's effective date. (Former § 4019, subd. (g).) Since defendant's crime was committed before the effective date, the trial court erred calculating conduct credits under that provision.

The trial court should have calculated defendant's conduct credits under the January 25, 2010 amendment to section 4019. (See *People v. Brown* (2012) 54 Cal.4th 314, 318 [January 25, 2010 amendment applies to defendants in local custody on or after its operative date].) As in the current version of section 4019, the January 25, 2010 amendment entitles a defendant to two days of conduct credit for every two days of presentence custody. (Former § 4019, subds. (b), (c), (f) (Stats. 2009, 3d Ex. Sess., ch. 28, § 50; see *Marquez, supra*, 30 Cal.4th at pp. 25-26.) Having served nine days in custody, defendant was entitled to eight days of conduct credit.

DISPOSITION

The judgment is modified to award defendant eight days of conduct credit. As modified, the judgment is affirmed.

The trial court is directed to amend its records to reflect the eight days of conduct credit and forward the appropriate documents to the relevant authorities.

_____ MURRAY _____, J.

We concur:

_____ RAYE _____, P. J.

_____ HOCH _____, J.