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

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH WAYNE THOMAS,

Defendant and Appellant.

C069864

(Super. Ct. No. CRF000206)

On appeal, defendant Kenneth Wayne Thomas 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) constitutes a violation of equal protection. Following the California Supreme Court’s decision in *People v. Lara* (2012) 54 Cal.4th 896 at page 906, footnote 9 (*Lara*), we reject defendant’s contention. We affirm the judgment.

BACKGROUND¹

Defendant pled no contest to assault with a deadly weapon, a knife (Pen. Code, § 245, subd. (a)(1)).² Under the terms of the plea, defendant would waive time for

¹ Given the nature of the issue on appeal, only the facts and procedural history relevant to our disposition are recounted.

sentencing and attend a residential treatment program. Upon successful completion of the program, the felony offense would be reduced to a misdemeanor. If defendant did not complete the program, he would serve four years in state prison for the felony offense.

Defendant failed to appear at a presentencing status conference held on October 30, 2000. At the same hearing, the trial court was informed that defendant had been discharged by the Salvation Army Rehabilitation Center for failing to comply with his program. The trial court issued a no-bail warrant for defendant's arrest.

Defendant was extradited from Colorado and appeared before the trial court on June 1, 2011. The trial court sentenced defendant to four years in state prison and awarded 505 days of presentence credit (373 actual and 132 conduct). The court later amended the award of presentence credits to 558 days, consisting of 372 days' actual and 186 days' conduct credit.

Defendant committed his offense on April 3, 2000, and was sentenced on November 14, 2011. His conviction for assault with a deadly weapon is a serious felony. (§ 1192.7, subd. (c)(31).)

The trial court sentenced defendant under the September 28, 2010, revision of the presentence credit law. Under that version, a defendant with a current or prior serious or violent felony conviction was entitled to two days of conduct credit for every four days of presentence custody. (Former §§ 2933, 4019.)

Prospective Application of Section 4019

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).)

² Undesignated statutory references are to the Penal Code.

Defendant argues that the prospective application of section 4019 violates his right to equal protection. 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.