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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH DANGELO DUNCAN, SR.,

Defendant and Appellant.

C069993

(Super. Ct. No. SF115938A)

Defendant Joseph Dangelo Duncan, Sr., appeals the sentence imposed following his plea of no contest to driving under the influence of alcohol and resisting arrest, and his admission that he had sustained a prior drunk driving conviction, two prior strike convictions, and had served four prior prison terms.

Defendant contends the October 1, 2011, amendments to Penal Code section 4019<sup>1</sup> increasing presentence conduct credits must be applied to him retroactively and the failure to do so constitutes a violation of equal protection. Following the California Supreme Court's decision in *People v. Lara* (2012) 54 Cal.4th 896, 906, footnote 9 (*Lara*), we reject defendant's contention. Defendant also contends the trial court failed to properly delineate the fines and fees imposed and the statutory bases for those fines and

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

fees. Relying on *People v. High* (2004) 119 Cal.App.4th 1192 (*High*), the People properly concede this point. Accordingly, we remand the matter and direct the trial court to amend the abstract of judgment with a proper delineation of the fines and fees imposed upon defendant. In all other respects, we affirm the judgment.

## BACKGROUND<sup>2</sup>

Defendant pled no contest to driving under the influence of alcohol within 10 years of having sustained a prior conviction for the same offense (Veh. Code, §§ 23152, subd. (a), 23540), driving with a blood alcohol level of .08 percent or higher within 10 years of having sustained a prior conviction for the same offense (Veh. Code, §§ 23152, subd. (b), 23540), and resisting arrest (§ 148). He also admitted he had suffered two prior serious felony convictions and served four prior prison terms. The court struck one of the prior convictions, and defendant was sentenced to an aggregate term of five years in state prison. He was awarded 232 days of actual credit, and 116 local conduct credits. The trial court also imposed fines and fees as follows: “There’s a fine in the amount of \$2,744, as well as the court security fee in the amount of \$120, and an administrative -- excuse me. \$80. I apologize. I was wrong in the math. And an administrative fee in the amount of \$60. [¶] There’s also a transportation fee in the amount of \$4, but that’s included in the \$2,744.”

## DISCUSSION

### I

#### *Prospective Application of Section 4019*

The Criminal Justice Realignment Act of 2011 (Stats. 2011, ch. 15, § 482) amended section 4019, entitling defendants to two days of conduct credit 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

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

applies prospectively to defendants serving presentence incarceration for crimes committed on or after October 1, 2011. (§ 4019, subd. (h).)

Defendant contends he is entitled to additional presentence conduct credits under this amendment to section 4019. 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 conduct 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 conduct 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.

## II

### *Fines and Fees*

Defendant next contends the trial court failed to specify the individual fines and fees imposed, the amount of those fines and fees, and the relevant statutory bases. The People properly concede this point.

As we explained in *High*, at sentencing, the trial court must provide a "detailed recitation of all the fees, fines and penalties on the record," including their statutory

bases. (*High, supra*, 119 Cal.App.4th. at p. 1200.) All of these fines and fees must be set forth in the abstract of judgment. (*Ibid.*)

Here, the trial court did not recite the statutory bases for any of the fines and fees. The court did not delineate either the bases of the \$2,744 fine or the composition of that fine. We must remand the matter to the trial court for the limited purpose of preparing an amended abstract of judgment specifying the amount and the statutory basis for each fine, fee, and penalty imposed upon defendant.

**DISPOSITION**

Defendant’s convictions are affirmed. The trial court is directed to prepare an amended abstract of judgment separately listing the fines, fees, and penalties imposed upon defendant, and specifying the statutory bases for all fines, fees, and penalties imposed. The trial court shall forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

\_\_\_\_\_ HOCH \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.