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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ARMANDO ANGUIANO

on

Habeas Corpus.

D070509

(San Diego County
Super. Ct. No. DN157427)

Petition for writ of habeas corpus following a judgment of contempt of the Superior Court for the County of San Diego, Margo L. Lewis, Judge. Relief granted.

Stephen Temko, for Petitioner.

Roger Thompson for Respondent.

Petitioner Armando Anguiano challenges a judgment of contempt by way of a petition for writ of habeas corpus. He argues the court erred in finding that he was not eligible to receive conduct credits pursuant to Penal Code section 4019.¹ We agree. Section 4019 expressly applies to confinement for contempt and the court erred in entering a judgment to the contrary. Accordingly, we grant relief and modify the judgment.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

In 2012, an order for child support was entered following a divorce between petitioner Armando Anguiano and his ex-wife, Rosa. Under the child support order, Anguiano was required to pay child support of \$1,219 per month to support his daughter Amanda until she reached age 19, or was 18 but no longer a full-time high school student, whichever occurred first. From November 2012 until June 2013, Anguiano paid only \$1,000 per month. After June 2013, when Amanda graduated from high school, he stopped paying child support altogether.

Rosa then initiated contempt proceedings by obtaining an order to show cause from the court. Following the close of evidence at a bench trial, the court found Anguiano in contempt for failing to completely pay eight months of child support as required by the support order.²

At a subsequent sentencing hearing on May 6, 2016, the court sentenced Anguiano to two days' confinement per missed payment for a total sentence of 16 days. The court initially stated that Anguiano would receive conduct credits pursuant to section 4019, but Anguiano's own counsel immediately represented to the court that for a civil contempt commitment, "he cannot get 4019s." The court accepted counsel's statement and,

² At the same time this court issued its order to show cause, we partially denied Anguiano's writ petition to the extent it challenged the finding of contempt. (See, e.g., *People v. Boyd* (1987) 43 Cal.3d 333, 363 [issuance of order to show cause on a specific issue is proper when court determines a prima facie case has not been made as to the other issues raised in a writ petition].) Because the finding of contempt is not at issue, we do not discuss the evidence supporting that finding.

accordingly, entered a judgment sentencing Anguiano to a total term of 16 days and stated "Defendant/citee is not entitled to 4019 credits."

Before Anguiano was scheduled to begin his sentence, he filed this petition for writ of habeas corpus challenging the court's judgment. We temporarily stayed imposition of the sentence to allow for consideration of this writ and issued an order to show cause on the specific issue of whether Anguiano is entitled to receive conduct credits pursuant to section 4019.

DISCUSSION

Anguiano was found in contempt and sentenced to an unconditional term of confinement as punishment for failing to comply with the court's order of child support. As such, his contempt is criminal in nature. (See, e.g., *In re Nolan W.* (2009) 45 Cal.4th 1217, 1237 [criminal contempt may be used to punish past conduct in violation of a court order]; see also Code Civ. Proc., § 1218, subd. (c).)

A petition for writ of habeas corpus is an accepted procedure for challenging a judgment of contempt, which is not appealable, when the petitioner is confined or threatened with confinement. (*In re Buckley* (1973) 10 Cal.3d 237, 240, fn. 1; *In re Blaze* (1969) 271 Cal.App.2d 210, citing *Kreling v. Superior Court* (1941) 18 Cal.2d 884, 887; see also *People v. Gonzalez* (1996) 12 Cal.4th 804, 816 [no right to appeal].) Although a finding of contempt is reviewed under the substantial evidence standard of review (*In re M.R.* (2013) 220 Cal.App.4th 49, 58), we review the trial court's application of section 4019 under the de novo standard of review. (*Goodstein v. Superior Court* (1996) 42

Cal.App.4th 1635, 1641 [interpretation and application of a statute is an issue of law subject to de novo review].)

Generally, an inmate is entitled to receive "conduct credits" under section 4019 when he is able to "satisfactorily perform labor" and has "satisfactorily complied with reasonable rules and regulations established by the sheriff" while incarcerated for any period of four days or longer. (§ 4019, subds. (b), (c), (e).) Assuming the inmate complies with these requirements, "a term of four days will be deemed to have been served for every two days spent in actual custody." (*Id.* at subd. (f).)

The question of law presented here is whether "conduct credits" pursuant to section 4019 are available to an inmate serving a sentence as a result of a finding of contempt in a family court proceeding. Section 4019 applies, inter alia, "[w]hen a prisoner is confined in or committed to the county jail . . . for a definite period of time *for contempt* pursuant to a proceeding, other than a criminal action or proceeding."

[Emphasis added.] At least one decision has held that a person found in contempt in a civil proceeding is entitled to section 4019 conduct credits. (*In re Jackson* (1986) 182 Cal.App.3d 439, 443.) We are aware of no authority to the contrary. Based on the plain language of the statute, Anguiano was eligible for conduct credits and the court erred in entering a judgment of contempt to the contrary.

The trial court entered a judgment withholding conduct credits only because it accepted a representation by Anguiano's own counsel that section 4019 did not apply. In his writ petition, Anguiano admits the court was "mis-advised" by his own counsel. The fact that Anguiano's counsel made a mistaken statement, however, does not negate the

error or require a denial of the writ petition. Given the quasi-criminal nature of contempt proceedings, Anguiano's counsel's adverse errors cannot deprive Anguiano of a legally valid term of confinement. Accordingly, the trial court erred and relief is warranted.

DISPOSITION

The judgment of contempt is modified to strike the sentence stating "Defendant/citee is not entitled to 4019 credits" and to add a new sentence stating that "Defendant/citee is entitled to 4019 credits." The stay issued by this court on June 23, 2016, is vacated.

BENKE, Acting P. J.

WE CONCUR:

NARES, J.

IRION, J.