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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN KELLY MCAVOY,

Defendant and Appellant.

E055234

(Super.Ct.No. FVI1102397)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn M. Poncin, Judge. Affirmed as modified.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles Ragland and Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant appeals from his conviction of second degree burglary. (Pen. Code, § 459.)¹ His sole issue on appeal is that he should receive an additional six days of presentence conduct credit under section 4019. The People agree, as does this court, and so we modify the judgment accordingly.

STATEMENT OF THE CASE

On October 26, 2011, defendant pled guilty to one count of second degree burglary. Defendant committed the burglary on October 13, 2011. Defendant admitted a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and a prison prior (§ 667.5, subd. (b)). That same day, the trial court sentenced defendant to the low term of 16 months, doubled for the strike conviction, with a consecutive one-year term for the prison prior, for a total prison sentence of three years eight months. The trial court credited defendant with 13 actual days and six days for good conduct, for a total of 19 days of presentence credit. This appeal followed.

DISCUSSION

Defendant contends he is entitled to six additional days of conduct credits under section 4019, for a total of 25 days of presentence credit.

Section 4019 was amended, operative October 1, 2011, pursuant to the Criminal Justice Realignment Act. (Stats. 2011, ch. 15, § 482, (AB 109).) The amendment changed the accrual rate of section 4019 credits. Defendants are now eligible to earn two days of credit for every two days served in custody. (§ 4019, subd. (f).) The new credits

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

in section 4019 are available only to defendants who committed their crimes on or after October 1, 2011. (§ 4019, subd. (h).)

Defendant is entitled to conduct credits under the amended statute, because he committed his crime on October 13, 2011, which is after the new law went into effect. Accordingly, defendant should have received two days of conduct credit for every two days spent in custody. Because appellant spent 13 days in custody, he is entitled to 12 days of conduct credit. He received six days, so he is entitled to an additional six days of conduct credit.

DISPOSITION

The judgment is modified to set defendant's custody credits at 13 actual days, and 12 conduct days pursuant to section 4019, for a total of 25 days. The superior court clerk is directed to amend the sentencing minute order and abstract of judgment to correct the custody credits and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

WE CONCUR:

HOLLENHORST
J.

KING
J.