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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.

JUAN PULIDO,

Defendant and Appellant.

E055269

(Super.Ct.No. RIF1101263)

OPINION

APPEAL from the Superior Court of Riverside County. Jeffrey Prevost, Judge.

Affirmed.

Steven S. Lubliner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Seth M. Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Juan Pulido contends that he is entitled to additional presentence conduct credits pursuant to Penal Code<sup>1</sup> section 4019, for time spent in custody between October 1, 2011 and October 21, 2011. We reject his contention and hold that section 4019, as amended April 1, 2011 and operative October 1, 2011, applies only to defendants convicted of crimes which took place before October 1, 2011.

### BACKGROUND

Defendant pleaded guilty to three felonies and a misdemeanor, all of which were committed on or about January 12, 2011.<sup>2</sup> He was sentenced to an agreed-upon prison term of eight years eight months. Defendant was awarded 283 days of presentence custody credits and 140 days of presentence conduct credits. He filed a timely notice of appeal from the sentence only. Defendant's subsequent motion in the trial court for additional credit was denied.

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<sup>1</sup> All statutory citations refer to the Penal Code.

<sup>2</sup> Felon in possession of a firearm (count 1; § 12021, subd. (a)(1)); felon in possession of ammunition (count 2; § 12316, subd. (b)(1)); failing to register as a sex offender (count 3; § 290, subd. (b)); and misdemeanor willfully giving a false name to a law enforcement officer (count 4; § 148.9, subd. (a)).

## LEGAL ANALYSIS

THE CONDUCT CREDIT CALCULATION PROVIDED FOR IN SECTION 4019,  
SUBDIVISIONS (B) AND (C) APPLIES ONLY TO PRISONERS IN LOCAL  
CUSTODY AWAITING SENTENCING FOR CRIMES COMMITTED BEFORE  
OCTOBER 1, 2011

A defendant is entitled to actual custody credit for “all days of custody” in county jail and residential treatment facilities, including partial days. (§ 2900.5, subd. (a); *People v. Smith* (1989) 211 Cal.App.3d 523, 526.) Section 4019 provides that a criminal defendant may earn additional presentence credit against his or her sentence for performing assigned labor (§ 4019, subd. (b)), and for complying with applicable rules and regulations of the local facility (§ 4019, subd. (c)). These presentence credits are collectively referred to as conduct credits. (*People v. Dieck* (2009) 46 Cal.4th 934, 939.)

Section 4019 has been amended multiple times. Before January 25, 2010, defendants were entitled to one-for-two conduct credits, which is two days for every four days of actual time served in presentence custody. (Former § 4019, subd. (f), as amended by Stats. 1982, ch. 1234, § 7, pp. 4553, 4554.) Effective January 25, 2010, the Legislature amended section 4019 to provide that prisoners, with some exceptions, earned one-for-one conduct credits, which is two days of conduct credit for every two days in custody. (Stats. 2009, 3d Ex. Sess. 2009–2010, ch. 28, § 50.) Effective September 28, 2010, the Legislature again amended section 4019. (Stats. 2010, ch. 426,

§§ 1, 2, 5.) Subdivisions (b) and (g) restored the one-for-two presentence conduct credit calculation that had been in effect prior to the January 25, 2010, amendment.

Most recently, the Legislature amended section 4019 to provide for up to two days credit for each four-day period of confinement in local custody. (§ 4019, subds. (b) & (c).) This scheme reflects the Legislature's intent that if all days are earned under section 4019, a term of four days will be deemed to have been served for every two days spent in actual custody. (§ 4019, subd. (f).) This version of section 4019 became operative on October 1, 2011. (Stats. 2011, ch. 39, § 53.) Defendant now contends that under the current version of section 4019, he is entitled to day-for-day conduct credits from October 1, 2011, the operative date of the statute, through October 21, 2011, the date he was sentenced, even though his crimes were committed before October 1, 2011.

At issue here is subdivision (h) of section 4019 (hereafter subdivision (h)), which provides: "The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." Defendant contends that subdivision (h) is ambiguous because the second sentence contradicts the first. He contends that the ambiguity can best be resolved by "giving effect to both sentences and concluding that the liberalized

scheme applies both to prisoners confined for crimes committed after October 1, 2011, and to prisoners confined after that date for earlier crimes.’”<sup>3</sup>

The function of statutory construction is to ascertain the intent of the Legislature in order to effectuate the purpose of the law. (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) If the language of the statute is ambiguous, a court will turn to the rules of statutory construction or to extrinsic sources to ascertain the Legislature’s intent. (*Id.* at p. 664.) Here, we agree that subdivision (h) is ambiguous. However, we disagree with defendant’s proposed construction.

The first sentence of subdivision (h) unambiguously states that the new calculation of conduct credits applies only to prisoners confined for an offense committed on or after October 1, 2011. The second sentence, “Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law,” could arguably be interpreted to mean that while the credits earned before October 1, 2011 are calculated at the prior rate, credits earned on or after October 1, 2011 are to be calculated at the new rate, regardless of when the offense was committed. That interpretation, however, is untenable because it renders the first sentence meaningless.

““It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.” A statute should be construed so that effect

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<sup>3</sup> Defendant relies on *People v. Olague* (2012) 205 Cal.App.4th 1126, and the quoted language is taken from that case. As defendant acknowledges, review was granted in *People v. Olague* (review granted Aug. 8, 2012, S203298), and it is no longer citable as authority. Nevertheless, defendant may of course adopt its reasoning.

is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error.’ [Citation.]” (*Rodriguez v. Superior Court* (1993) 14 Cal.App.4th 1260, 1269 (*Rodriguez*)). Accordingly, we cannot read the second sentence to imply that any credits earned by a defendant on or after October 1, 2011, shall be calculated at the enhanced conduct credit rate, even if the offense for which he or she is confined was committed before October 1, 2011, because that would render the first sentence superfluous.

Instead, we rely on another well-established rule of statutory construction to resolve the ambiguity. “‘A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed.’ [Citation.]” (*Rodriguez, supra*, 14 Cal.App.4th at p. 1268.) Subdivision (h)’s first sentence unambiguously reflects the Legislature’s intent to apply the enhanced conduct credit provision only to those defendants who committed their crimes on or after October 1, 2011. Because the second sentence cannot be read to extend the enhanced conduct credit provision to any other group, namely those defendants in local custody who committed offenses before October 1, 2011, without vitiating the first sentence, we conclude that subdivision (h)’s second sentence is intended to clarify that those defendants who committed an offense before October 1, 2011, are to earn credit, but only

as calculated under the prior law. (*People v. Ellis* (2012) 207 Cal.App.4th 1546, 1553.) To interpret the second sentence otherwise ignores the Legislature's clear intent, as expressed in the first sentence of subdivision (h). Accordingly, defendant is not entitled to additional credit for the time he was confined in county jail on and after October 1, 2011.

DISPOSITION

The judgment is affirmed.

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MCKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.  
CODRINGTON  
J.