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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.

KENNY WAYNE COX,

Defendant and Appellant.

E055507

(Super.Ct.Nos. RIF141923 &  
RIF143367)

OPINION

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNY WAYNE COX,

Defendant and Appellant.

E055508

(Super.Ct.Nos. RIF147801,  
RIF148097 & RIF151177)

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

John L. Staley, 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, Melissa Mandel and Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

In case Nos. RIF141923<sup>1</sup> and RIF147801,<sup>2</sup> defendant pled to numerous drug- and theft-related charges, as well as one assault with a deadly weapon on a police officer allegation (Pen. Code, § 245, subd. (c)),<sup>3</sup> and several other charges including resisting arrest (§ 148, subd. (a)(1)), evading an officer (§ 2800.2), and failure to appear (§ 1320, subd. (b)). Defendant also admitted to six separate out-on-bail enhancement allegations (§ 12022.1), five prior prison term allegations (§ 667.5, subd. (b)), one prior serious felony allegation (§ 667, subd. (a)), and one prior strike allegation (§§ 667, subds. (c), (e)(1) & 1170.12, subd. (c)(1)). In return, on both cases, defendant was sentenced to a total term of 30 years in state prison.

In case No. RIF141923, defendant received six actual days of presentence custody credit and two days of conduct credit, for a total of eight days of presentence custody

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<sup>1</sup> Originally, defendant's conduct from April 2008 was charged in case No. RIF143367, but the trial court consolidated case No. RIF143367 with case No. RIF141923.

<sup>2</sup> Originally, defendant's conduct from January 2009 was charged in case No. RIF148097 and his conduct from June 2008 was charged in case No. RIF151177, but the trial court consolidated case No. RIF147801 with case Nos. RIF148097 and RIF151177.

<sup>3</sup> All further statutory references are to the Penal Code unless otherwise indicated.

credit. In case No. RIF147801, defendant received 855 actual days of presentence credit and 426 days of conduct credit, for a total of 1,281 days of presentence custody credit. On appeal, defendant contends that he is entitled to additional presentence conduct credit pursuant to the new provisions of section 4019 and the equal protection clause. We reject these contentions and affirm the judgment.

## I

### DISCUSSION<sup>4</sup>

Defendant committed his crimes in 2008 and 2009, and he was sentenced on October 13, 2011. The trial court awarded him a total of 861 days of actual custody credit and 428 days of conduct credit. He had a prior conviction for assault with a deadly weapon on a police officer, a serious and violent felony and, therefore, did not qualify for day-for-day credit under former section 2933, subdivision (e). (Former § 2933, subd. (e)(1), as amended by Stats. 2010, ch. 426, § 1, eff. Sept. 28, 2010.)

Operative October 1, 2011, the Legislature amended section 4019 to allow all defendants serving presentence time in county jail to be eligible for day-for-day credit. (Stats. 2011, ch. 15, § 482, eff. Apr. 4, 2011, Stats. 2011, ch. 39, § 53, and Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 35.) Section 4019 now provides that “a term of four days will be deemed to have been served for every two days spent in actual custody.” (§ 4019, subd. (f).) The only defendants who are excluded from section 4019’s current day-for-day credit provisions are those who have a current violent felony or murder

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<sup>4</sup> The details of defendant’s criminal conduct are not relevant to the limited legal issue raised in this appeal. Those details are set out in defendant’s opening brief, and we will not recount them here.

conviction. (See §§ 2933.1, subd. (c), 2933.2, subd. (c).) By its express terms, the amendment to section 4019 applies only to defendants whose crimes were committed on or after October 1, 2011. (§ 4019, subd. (h).) Additionally, subdivision (h) expressly provides that this change “*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.” (§ 4019, subd. (h), italics added.)

Defendant argues that, despite the express terms of section 4019, he is entitled to additional presentence conduct credit on the ground that the equal protection clause required that the recently amended section 4019 be applied to him retroactively. Based on our Supreme Court’s recent decisions in *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*) and *People v. Lara* (2012) 54 Cal.4th 896 (*Lara*), we conclude that equal protection principles do not require retroactive application of the October 1, 2011, amendment to section 4019.

In *Lara*, the Supreme Court explained its rejection of the defendant’s equal protection argument as follows: “As we there [*Brown, supra*, 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*, 54 Cal.4th at p. 906, fn. 9; see also *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1551 [appellate court held that the *Brown* court's reasoning and conclusion applied equally to the Oct. 1, 2011, amendment to § 4019, and that amendment did not apply retroactively].) We agree with the reasoning and conclusions of *Brown*, *Lara*, and *Ellis* and, therefore, we reject defendant's argument that he was entitled to additional conduct credits.<sup>5</sup>

II

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

RICHLI

J.

KING

J.

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<sup>5</sup> In his reply brief, defendant acknowledges that we are bound by the *Brown* decision (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455), but raises the issue to preserve it for federal review.