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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.

ROBERT DANIEL CASTILLO,

Defendant and Appellant.

E056645

(Super.Ct.No. RIF10000169)

OPINION

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

Affirmed.

Rex Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Robert Daniel Castillo was charged by information with theft. (Pen. Code,¹ § 484, subd. (a), count 1.) It was also alleged that he had six prior strike convictions. (§§ 667, subds. (c) & (e)(2)(A), 1170.12, subd. (c)(2)(A).) Pursuant to a plea agreement, defendant pled guilty to count 1 and admitted one prior strike conviction. Defendant moved the trial court to strike his prior strike convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and the court struck the remaining prior strike convictions. The court sentenced him to six years in state prison and awarded 748 days of presentence custody credits (623 actual days and 125 conduct credits).

Defendant moved the court twice to correct the number of presentence custody credits awarded, pursuant to the October 1, 2011 modification to section 4019. The court denied the motions because defendant's offense was committed in 2009, and because he had prior strike convictions. Defense counsel subsequently submitted ex parte correspondence to the court, pointing out that it had erred in its calculation of custody credits, even applying the former version of section 4019 that was in effect at the time of the offense. The court changed the amount of custody credits awarded to 933 days (623 actual days and 310 conduct credits). We affirm.

PROCEDURAL BACKGROUND

Defendant was charged with and admitted that on or about December 12, 2009, he committed theft, a felony. (§ 484, subd. (a).)

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue: whether principles of equal protection and ex post facto laws require that defendant be afforded conduct credits under the most recent version of section 4019, effective October 1, 2011. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI
J.

KING
J.