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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.

GREGORY POSTELL,

Defendant and Appellant.

E056654

(Super.Ct.No. RIF147551)

OPINION

APPEAL from the Superior Court of Riverside County. Bernard Schwartz, Judge.

Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Gregory Postell appeals after the trial court denied his motion to grant additional presentence conduct credits pursuant to the version of Penal Code section 4019 that became effective on January 25, 2010 (former § 4019).¹ We affirm the trial court's order.

PROCEDURAL BACKGROUND

A jury found defendant guilty of possession of a controlled substance for the purpose of sale. (Health & Saf. Code, § 11351, count 1.) He admitted that he had two prior drug offense convictions within the meaning of Health and Safety Code section 11370.2, and that he had served five prior prison terms. (Pen. Code, § 667.5, subd. (b).)² On May 29, 2009, the trial court sentenced him to a total term of 10 years in state prison. (*People v. Postell* (June 23, 2010, E048763) [nonpub. opn.].) The court awarded him 169 days of actual presentence custody credits, plus an additional 84 days for conduct credits under former section 4019.³

¹ Penal Code section 4019 has since been amended again.

² All further statutory references will be to the Penal Code, unless otherwise noted.

³ We note that the version of section 4019 in effect when defendant was sentenced provided that he was entitled to two days of conduct credit for every four days of presentence custody. (Former § 4019, Stats. 1982, ch. 1234, § 7.) Effective January 25, 2010, however, section 4019 was amended so as to provide that a defendant was entitled to two days of conduct credit for every two days of presentence custody. (Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 50.)

On March 12, 2012, defendant, in propria persona, filed an ex parte motion for an order correcting presentence conduct credits, based upon a retroactive application of former section 4019. The trial court denied the motion on June 21, 2012.

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, a summary of the facts, and one potential arguable issue: whether defendant was entitled to the retroactive enforcement of former section 4019 under principles of due process and equal protection. Counsel has also requested this court conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. We note that the California Supreme Court recently addressed whether the January 25, 2010 amendment to section 4019 should be given retroactive effect. (*People v. Brown* (2012) 54 Cal.4th 314.) *Brown* found that the January 25, 2010 amendment operated prospectively only. (*Id.* at pp. 319-323.) The court also found that equal protection did not require former section 4019 to be applied retroactively. (*Id.* at p. 330.)

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

KING
J.