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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL JONES,

Defendant and Appellant.

F063013

(Super. Ct. Nos. BF111622A &
BF097867A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael E. Dellostritto, Judge.

Rita Barker, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Caely E. Fallini, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J. and Gomes, J.

INTRODUCTION

Appellant Carl Jones was sentenced for multiple offenses. All his offenses were committed prior to October 1, 2011. At his sentencing hearing, the trial court awarded presentence conduct credits pursuant to former Penal Code section 4019.¹ (Stats. 2010, ch. 426, § 2, eff. Sept. 28, 2010.) Jones contends he is entitled to additional presentence credits based upon equal protection principles in light of the amendments to section 4019 that became operative October 1, 2011. (Stats. 2011, 1st Ex. Sess. 2011-2012, ch. 12, § 35, eff. Sept. 21, 2011, operative October 1, 2011.) Jones also contends the abstract of judgment must be corrected in that it reflects an incorrect statute for calculation of presentence credits.

We reject Jones's equal protection argument, but will direct that the abstract of judgment be corrected to reflect the correct statute for calculation of presentence credits.

FACTUAL AND PROCEDURAL SUMMARY

Jones was sentenced on February 22, 2006, in two cases, Nos. BF111622A and BF097867A, after pleading no contest or guilty to being a felon in possession of ammunition, maintaining a place for sale of a controlled substance, and possession of a controlled substance. The trial court found that Jones was an addict, or in imminent danger of becoming an addict, suspended execution of sentence, and ordered Jones committed pursuant to Welfare and Institutions Code section 3051² for a period of four years eight months.

At some point Jones was released from custody. Thereafter, on July 12, 2011, Jones was remanded into custody after committing a second violation of probation. On

¹All further statutory references are to the Penal Code unless otherwise stated.

²Welfare and Institutions Code section 3051 provides that prior to July 1, 2012, under certain circumstances, defendants who were addicts or in imminent danger of becoming addicts would be confined in a California Rehabilitation Center treatment facility instead of prison.

July 13, Jones appeared in court, with counsel, and stipulated that the California Rehabilitation Center commitment be set aside; criminal proceedings were reinstated. Jones was committed to state prison for the previously suspended term of imprisonment of four years eight months. Jones was awarded 193 days of presentence credits in case No. BF111622A and 214 days of presentence credits in case No. BF097867A, along with credit for time served.

DISCUSSION

Jones contends on appeal that additional presentence credits should be awarded to him based upon the amendments to section 4019, operative October 1, 2011. He contends failure to award the additional credit constitutes a violation of equal protection principles. Jones also contends the abstract of judgment contains a clerical error in that it reflects local conduct credits were awarded under section 2933.1 instead of section 4019.

I. Equal Protection

This court previously has addressed, and rejected, the equal protection arguments raised here by Jones in our decision in *People v. Ellis* (2012) 207 Cal.App.4th 1546 (*Ellis*).

Section 4019, subdivision (h) specifically states that the changes increasing credits are to apply prospectively only. In *Ellis*, we concluded that the intent of the Legislature “was to have the enhanced rate apply *only* to those defendants who committed their crimes on or after October 1, 2011. [Citation.]” (*Ellis, supra*, 207 Cal.App.4th at pp. 1552-1553.) It is undisputed that Jones’s offenses were committed well before this date.

“The concept of equal protection recognizes that persons who are similarly situated with respect to a law’s legitimate purposes must be treated equally. [Citation.]” (*People v. Brown* (2012) 54 Cal.4th 314, 328 (*Brown*).) Contrary to Jones’s contention, the amendments to section 4019 effective October 1, 2011, do not treat similarly situated groups in a disparate manner. (*Ellis, supra*, 207 Cal.App.4th at pp. 1551-1552.)

The amendments to section 4019 address “‘*future conduct* in a custodial setting by providing increased incentives for good behavior.’ [Citation.]” (*Ellis, supra*, 207 Cal.App.4th at p. 1551.) Prisoners serving time before and after the effective date of a statute affecting conduct credits are not similarly situated for purposes of equal protection analysis. (*Brown, supra*, 54 Cal.4th at pp. 329-330, disapproving *In re Kapperman* (1974) 11 Cal.3d 542.) The correctional purpose of a statute that rewards behavior is not served by rewarding prisoners who served time in custody prior to the effective date of the incentives because they could not have modified their behavior in response to the incentives. (*Brown, supra*, 54 Cal.4th at p. 329.)

Jones’s offenses were committed well before the effective date of the amendment.³ Based upon our determination in *Ellis* that those committing crimes prior to October 1, 2011, are not similarly situated to those committing crimes on and after October 1, 2011, for purposes of equal protection analysis pertaining to conduct credits, we reject Jones’s equal protection argument.

II. Abstract of Judgment

Jones contends, and the People concede, that the abstract of judgment erroneously reflects that presentence credits were calculated pursuant to section 2933.1. Section 2933.1 places a 15 percent limitation on conduct credits for specified offenses. None of the offenses committed by Jones, however, falls within section 2933.1. Both Jones and the People concede that the trial court calculated presentence credits in accordance with former section 4019, in effect in July 2011.

Clerical errors in an abstract of judgment should be corrected. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) We will direct that the abstract of judgment be corrected to

³ His sentencing also occurred before the effective date for purposes of application of section 1170, subdivision (h). (*Ellis, supra*, 207 Cal.App.4th at p. 1553.)

reflect accurately the calculation of presentence credits is pursuant to former section 4019, not section 2933.1.

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment and to forward the corrected abstract to the appropriate authorities.