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

THE PEOPLE,

Plaintiff and Respondent,

v.

TRAVIS EUGENE CLEMENTS,

Defendant and Appellant.

F063655

(Super. Ct. No. PCF254696)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Ronn M. Couillard, Judge.

Deborah Prucha, 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, Louis M. Vasquez and Rebecca L. Whitfield, Deputy Attorneys General, for Plaintiff and Respondent.

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

Defendant Travis Eugene Clements appeals from a judgment entered after a plea of no contest, raising only an issue concerning entitlement to additional pretrial conduct credit. Subsequent to the filing of the briefs in this appeal, both the Supreme Court and this court have rejected the argument defendant presents in this appeal. Applying those relevant precedents, we reject defendant's contention and affirm the judgment.

FACTS AND PROCEDURAL HISTORY

On July 20, 2011, defendant entered a plea of no contest to one count of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and admitted one prior strike (see Pen. Code, § 1170.12, subds. (a)-(d)).¹ Defendant also admitted one misdemeanor count (Health & Saf. Code, § 11550, subd. (a) [being under the influence of a controlled substance]). Defendant waived time for preparation of a presentence report and requested immediate imposition of sentence. The court sentenced defendant to 16 months in prison, doubled to 32 months pursuant to Penal Code section 1170.12, subdivision (c)(1). The court awarded 14 days of presentence custody credit and two days of conduct credit, as limited for persons with a prior strike. (See former Pen. Code, § 4019, subds. (b) & (c), added by Stats. 2010, ch. 426, § 2.)²

DISCUSSION

Section 4019, subdivisions (b) and (c) no longer include the restriction of conduct credits for persons with a prior strike conviction. The current version of that section provides, however, that it "shall apply prospectively and shall apply to prisoners who are confined to a ... jail ... for a crime committed on or after October 1, 2011." (§ 4019, subd. (h).) Defendant acknowledges that, by the terms of the statute, he is not entitled to additional credit.

¹ The facts of the offense are not pertinent to this appeal.

² All further statutory references are to the Penal Code.

Defendant contends he is entitled to the additional credit provided under section 4019 as a matter of equal protection under the federal and state Constitutions. (See U.S. Const., 14th Amend.; Cal. Const., art I, § 7, subd. (a).) He relies primarily on his interpretation of *In re Kapperman* (1974) 11 Cal.3d 542 and *People v. Sage* (1980) 26 Cal.3d 498.

After completion of briefing in this case, however, the Supreme Court filed *People v. Brown* (2012) 54 Cal.4th 314. The *Brown* opinion distinguished *Sage* and *Kapperman*, and held that constitutional equal protection concepts do not require the retroactive application of legislative changes increasing the amount of conduct credit a prisoner can earn under section 4019. (*People v. Brown, supra*, 54 Cal.4th at pp. 329-330.) Thereafter, this court, in reliance on *Brown*, held that equal protection concepts did not require retroactive application of the changes to section 4019 that became effective October 1, 2011. (*People v. Ellis* (2012) 207 Cal.App.4th 1546, 1551.)

In essence, both *Brown* and *Ellis* held that the purpose of conduct credit under section 4019, subdivisions (b) and (c) is to provide an incentive for proper behavior by prisoners in local custody; a change in section 4019 that increases such credit cannot serve as an incentive after defendant's time in custody has been served. Accordingly, those whose future behavior might be influenced by the conduct incentives are situated differently from those whose conduct has already occurred and can no longer be influenced. (*People v. Brown, supra*, 54 Cal.4th at pp. 328-329; *People v. Ellis, supra*, 207 Cal.App.4th at pp. 1551-1552.)

The reasoning in those two cases is fully applicable in the present case: those who served jail time prior to the changes in section 4019 and those who earn conduct credit after the change in the law, are not similarly situated for equal protection purposes. As a result, the former group is not entitled to be treated the same as the latter group for purposes of the award of presentence conduct credits. (*Ibid.*) We therefore reject defendant's equal protection claim.

DISPOSITION

The judgment is affirmed.