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

THE PEOPLE,

Plaintiff and Respondent,

v.

JACQUELINE RENEE TAMPLIN,

Defendant and Appellant.

F063678

(Super. Ct. No. F09903063)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don D. Penner, Judge.

Donna J. Hooper, 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, Charles A. French and John G. McLean, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Kane, J. and Poochigian, J.

INTRODUCTION

On May 23, 2009, appellant Jacqueline Renee Tamplin committed burglary. On August 17, 2011, she pled no contest to the burglary charge and admitted one prior strike conviction. At the September 14, 2011, sentencing hearing, the trial court awarded presentence conduct credit pursuant to former Penal Code section 4019.¹ (Stats. 2010, ch. 426, § 2, eff. Sept. 28, 2010.) Tamplin contends she is entitled to additional presentence credit based upon 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 Oct. 1, 2011.) We disagree and will affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Tamplin was charged with second degree burglary. It was alleged the burglary was committed on May 23, 2009. It also was alleged that Tamplin had suffered a prior strike conviction for first degree robbery. Tamplin pled guilty to second degree burglary and admitted one prior strike on the understanding that at sentencing her motion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 would be granted and she would be placed on probation, with jail time of no more than 180 days as a condition of probation.

Tamplin failed to appear at her January 26, 2011, sentencing because she was in custody in Monterey County on a separate offense. On August 5, 2011, Tamplin appeared for sentencing on the Fresno County offense. The trial court indicated that given the Monterey County offense, it would not adhere to the indicated sentence.

Thereafter, on August 17, 2011, Tamplin pled no contest to second degree burglary and admitted the strike prior. On September 14, 2011, she was sentenced to the low term of 16 months for the second degree burglary conviction, doubled because of the

¹All further statutory references are to the Penal Code.

strike prior. Tamplin was awarded credit for 61 days actually served and an additional 30 days' credit pursuant to former section 4019.

DISCUSSION

Tamplin's sole contention on appeal is that additional presentence credits should be awarded to her based upon the amendments to section 4019, operative October 1, 2011. She contends failure to award the additional credit constitutes a violation of equal protection principles. This court previously has addressed, and rejected, the equal protection arguments raised here by Tamplin 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 Tamplin's offense was 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 Tamplin'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.)

Tamplin's offense was committed well before the effective date of the amendment.² 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 Tamplin's contentions.

DISPOSITION

The judgment is affirmed.

²Her 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.)