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

THE PEOPLE,

Plaintiff and Respondent,

v.

ISIDRO ZAMUDIO ALVARADO,

Defendant and Appellant.

F064308

(Super. Ct. No. F11902066)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jon N. Kapetan, 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, Carlos A. Martinez and Wanda Hill Rouzan, Deputy Attorneys General, for Plaintiff and Respondent.

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

Appellant Isidro Zamudio Alvarado pled no contest to a second degree burglary charge (Pen. Code,¹ §§ 459, 460, subd. (b)). The court sentenced appellant to three years' formal probation on the condition that he serve 180 days in jail with credit for 50 actual days plus 24 conduct days, for a total of 74 presentence days. Appellant's sole ground on appeal concerns the trial court's calculation of conduct credits. Appellant contends that the equal protection clauses of the California and federal Constitutions require that the current formula for calculating conduct credits in section 4019, subd. (f) ("a term of four days will be deemed to have been served for every two days spent in actual custody") be applied to him such that he should receive 50 conduct credits rather than 24. We reject appellant's argument and affirm the lower court judgment.

DISCUSSION

Section 4019 has undergone several legislative changes in recent years which affect the calculation of conduct credits. Appellant's crime occurred in January 2011. He was awarded conduct credits pursuant to the version of section 4019 then in existence. In 2011, the Legislature amended section 4019, but expressly declared that the amendment would only apply to persons whose crimes were "committed on or after October 1, 2011" (§ 4019, subd. (h)). Since appellant's offense occurred in January 2011, the express language of the 2011 amendment excludes appellant from its application. However, appellant contends that equal protection principles require retroactive application of the amendment.

Our state Supreme Court rejected this argument in 2012. (*People v. Brown* (2012) 54 Cal.4th 314 (*Brown*)). In *Brown*, the court held that prisoners who served time in custody before the effective date of the 2010 amendment to section 4019 were not similarly situated to those who serve time in custody after the amendment took effect. Thus, the statute that increased presentence conduct credits did not increase credits for

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

custody before its effective date. No retroactive application was upheld. The court specifically rejected the equal protection argument that appellant asserts here. Moreover, in footnote 11 of the *Brown* opinion, the court also rejected Brown's claim that he was entitled to retroactive application of the 2011 amendment of section 4019. (*Brown, supra*, at p. 322, fn. 11.) The court pointed out that the amendment did not assist Brown because its changes expressly applied prospectively to prisoners whose crimes were committed on or after October 1, 2011, and Brown committed his offense in 2006. *Brown* also rejected appellant's argument here that *In re Kapperman* (1974) 11 Cal.3d 542 requires a different result. (*Brown, supra*, at p. 330.)

Brown disposes of appellant's retroactivity argument. The express language of the 2011 amendment to section 4019 renders the provisions of the amendment inapplicable to appellant.

DISPOSITION

The lower court judgment is affirmed.