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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM AGUSTUS SASSA,

Defendant and Appellant.

G044459

(Super. Ct. No. 09NF3534)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Donald F. Gaffney, Judge. Affirmed.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Meredith S. White, Deputy Attorney General, for Plaintiff and Respondent.

* * *

William Augustus Sassa appeals on the basis the court erred in limiting his conduct credits under Penal Code section 4019. His complaint is grounded on the fact that statute, governing the computation of such credits, has been amended several times during the pendency of his case and one of those amendments would give him greater credit than did the trial court. But we find his crimes were committed before the applicable date of the amendment he invokes, and since that amendment was not retroactive, he cannot take advantage of it. We therefore affirm the judgment.

FACTS

William Augustus Sassa filed a notice of appeal following the judgment of conviction and an order sentencing him to state prison after a guilty plea to possession for sale of methamphetamine (Health & Saf. Code, § 11378), transportation of methamphetamine (Health & Saf. Code, § 11379) (both felonies), and driving on a suspended or revoked license (Veh. Code, § 14601.1) (a misdemeanor). The judgment and order followed a negotiated plea, in which appellant admitted all three charges and also admitted prior convictions of robbery and felony assault, both of which qualified as “strikes” under California’s Three Strikes Law. Under the terms of his plea, he admitted that, “In Orange County, California, on 12/7/09, I willfully and unlawfully transported methamphetamine for purposes of sales. I also drove while my CDL was suspended and I knew it was suspended.” The court struck the prior strike convictions for purposes of sentencing and committed him for four years, the upper term on the transportation count, with a concurrent sentence for the misdemeanor, and credit for time served of 333 days, calculated on the basis of two days credit for every four days served under Penal Code section 4019 as it existed at the time of sentencing. Punishment for the possession for sale count was barred pursuant to Penal Code Section 654.

Appellant subsequently asked the court to give him one-for-one credit for time served as provided by the amendment to Penal Code section 4019 that went into effect after his sentencing. The court declined to do so, and since a certificate of probable

cause was not obtained, his appeal is limited to issues arising after the entry of the plea that do not challenge its validity or involve a search or seizure issue raised below under Penal Code section 1538.5. (See Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).)

DISCUSSION

We appointed counsel to represent Sassa on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against his client, but advised us he could find no issues to argue on appellant's behalf. Appellant was given 30 days to file written argument in appellant's own behalf. He did not do so. We issued an opinion in accordance with *People v. Wende* (1979) 25 Cal.3d 436, but subsequently had second thoughts about the sentencing issue. So we vacated our opinion, ordered briefing and heard oral argument on the matter. Having considered the issue closely, we are now convinced the trial court and appellate counsel got it right: Appellant is not entitled to one-for-one credits under Penal Code section 4019.

Defendant was sentenced on June 4, 2010 for crimes committed on December 7, 2009. At the time of his crime, the applicable version of Penal Code section 4019 gave him two days credit for every four days served (a total of six days for every four actual calendar days). By the time of his sentencing, the statute had been amended (Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28X, § 50) to provide for one-to-one credits, meaning for every two days served, prisoners would be given credit for an additional two, totaling four.¹ But, effective September 28, 2010, the Legislature amended the statute to return it to the original one-to-two ratio (Stats. 2010, ch. 426, 2, p. 2088.) While the current version of Penal Code section 4019 provides for a one-to-one ration (Pen. Code,

¹ But that amendment explicitly excluded anyone who – like appellant – had previously been convicted of a violent or serious felony. This proviso is another flaw in appellant's argument, but we need not dwell on it in light of our holding.

§ 4019, subd. (h)), that version further provides: “The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined . . . for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.” (*Ibid.*)

Our reading of this statutory history is that only those people who committed crimes within the January through September 2010 window of application or after October 1, 2011 accrue credits at the increased, one-to-one ratio. Appellant’s crimes were committed in December of 2009, so none of the one-to-one sentencing schemes applied to him.

The concern that originally caused us to order briefing in this case was based upon *In re Estrada* (1965) 63 Cal.2d 740, which says that when the punishment for a crime is ameliorated before the case is final, the defendant/appellant gets to take advantage of the more lenient punishment scheme. In *Estrada*, the punishment for the crime of escape (Pen. Code, §§ 3044, 4530) had been reduced between the time of Estrada’s commission of the offense and the time judgment was pronounced. *Estrada* held that in determining the applicable statute to be applied to a sentencing, “The key date is the date of final judgment. If the amendatory statute lessening punishment becomes effective prior to the date the judgment of conviction becomes final then, in our opinion, it, and not the old statute in effect when the prohibited act was committed, applies.” (*Estrada*, supra, 63 Cal.2d at p. 744). That caused us to wonder if appellant wasn’t entitled to the one-to-one credit scheme in effect at the time of his sentencing.

But events have overtaken appellant. On June 18, 2012, the California Supreme Court decided *People v. Brown* ((S181963) ___ Cal.4th ___ [2012 Cal. Lexis 5263]), and held the January through September 2010 amendment did not apply retroactively to persons who committed their offense before the amendment’s effective date, but were sentenced after it became effective. (*Id.* at p. ___ [2012 Cal. Lexis 5263 at

p. *2].) As the court explained, “The holding in *Estrada* was founded on the premise that “[a] legislative mitigation of the penalty for a particular crime represents a legislative judgment that the lesser penalty or the different treatment is sufficient to meet the legitimate ends of the criminal law.” [Citation.] . . . In contrast, a statute increasing the rate at which prisoners may earn credits for good behavior does not represent a judgment about the needs of the criminal law with respect to a particular criminal offense, and thus does not support an analogous inference of retroactive intent.” (*Id.* at p. ____ [2012 Cal. Lexis 5263 at pp. *20-*21].) In other words, they held that where it is not the punishment for the crime that is ameliorated, but the manner in which the resultant imprisonment will be served, there is no reason to presume retroactive application, a la *Estrada*.

But *Brown* did not merely resolve appellant’s statutory interpretation claim against him. It also rejected any equal protection claim we might have considered. “[The] first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner,”” (*Brown, supra*, ____ Cal.4th at p. ____ [2012 Cal. Lexis 5263 at p. *29], but people who commit crimes “before and after the new law took effect” are not similarly situated. (*Id.* at p. ____ [2012 Cal. Lexis 5263 at p. *26].) As *Brown* explained, “‘The obvious purpose of the new section’ . . . ‘is to affect the behavior of inmates by providing them with incentives to engage in productive work and maintain good conduct while they are in prison.’ [Citation.] ‘[T]his incentive purpose has no meaning if an inmate is unaware of it. The very concept demands prospective application.’” (*Id.* at p. ____ [2012 Cal. Lexis 5263 at p. *30].)

DISPOSITION

Sassa's sentencing was appropriate. The judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.