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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.

MICHAEL ALLAN COSTA,

Defendant and Appellant.

G045965

(Super. Ct. No. 11HF2201)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Michael A. Leversen, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Michael Allan Costa pleaded guilty to possession of methamphetamine and driving with a suspended license. Costa contends he was denied his constitutional right to equal protection because the trial court failed to award him the enhanced presentence conduct credits available under the current iteration of Penal Code section 4019 (§ 4019), which applies where the crimes are “committed on or after October 1, 2011.” For the reasons expressed below, we affirm.

## I

### FACTS AND PROCEDURAL BACKGROUND

A felony complaint alleged that on August 26, 2011, Costa possessed methamphetamine (Health & Saf. Code, § 11377, subd. (a)), possessed a drug pipe (Health & Saf. Code, § 11364), and drove with a suspended or revoked license (Veh. Code, § 14601, subd. (a)). The complaint also alleged Costa had suffered six prior convictions for driving with a suspended or revoked license between November 2006 and December 2010.

Costa posted a \$20,000 bail bond on September 7, 2011. On October 24, as part of a negotiated plea agreement, Costa pleaded guilty to possessing methamphetamine and driving with a suspended or revoked license, and admitted the priors. The trial court granted the prosecution’s motion to dismiss the charge for possessing a drug pipe. The court placed Costa on probation on various terms and conditions, including service of a 90-day jail term. The court determined Costa had served 13 days in actual custody before sentencing, and awarded him six days of conduct credit under section 4019.

## II

### DISCUSSION

#### *Trial Court's Award of Conduct Credits Under the September 2010 Version of Section 4019 Did Not Violate Costa's Right to Equal Protection of the Laws*

Section 4019 authorizes sentence credits for worktime and for good behavior. (§ 4019, subs. (b) & (c); *People v. Dieck* (2009) 46 Cal.4th 934, 939 (*Dieck*); *People v. Buckhalter* (2001) 26 Cal.4th 20, 36.) The credits are collectively referred to as “conduct credit.” (*Dieck*, at p. 939, fn. 3.) Subdivision (a) of section 4019 authorizes an award of conduct credit to a defendant for time spent in custody between the date of arrest and grant of probation. (*People v. Engquist* (1990) 218 Cal.App.3d 228, 230-232 [credits may be awarded to a defendant felon for time spent in custody prior to a grant of probation].)

The version of section 4019 in effect at the time defendant committed the instant offenses allowed a defendant to earn conduct credit at a rate of *two* days for every four-day period of actual presentence custody. (Former § 4019, subs. (b), (c), (f) & (g); Stats. 2010, ch. 426, § 2.) Under this version of section 4019, Costa, in actual presentence custody for 13 days, was entitled to 6 days of conduct credit. (See *In re Marquez* (2003) 30 Cal.4th 14, 25-26 [conduct credit is calculated by taking the number of actual custody days, dividing by four, discarding any remainder, and multiplying the result by two].)

Operative October 1, 2011, the current version of section 4019 generally provides that a defendant may earn conduct credit at a rate of *four* days for every four-day period of actual presentence custody. (§ 4019, subs. (b), (c) & (f).)<sup>1</sup>

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<sup>1</sup> Section 4019 provides that for every four days spent in custody before sentence, the defendant receives a one day deduction from his period of confinement “unless it appears by the record that the prisoner has refused to satisfactorily perform

Section 4019 provides that this rate “shall apply prospectively” and that the rate applies to defendants who are confined in local custody “for a crime committed on or after October 1, 2011.” (§ 4019, subd. (h).)

Here, Costa committed his crimes *prior* to October 1, 2011. Costa nevertheless contends principles of equal protection require the version of section 4019 operative October 1, 2011, be applied to him and that, under this version, he is entitled to six additional days of conduct credit. We disagree.

To prevail on an equal protection claim, a defendant must first establish the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1199.) If the statutory distinction at issue does not touch upon fundamental interests or involve a suspect classification, no equal protection violation occurs “if the challenged classification bears a rational relationship to a legitimate state purpose. [Citations.]” (*Id.* at p. 1200.) Under the rational relationship test, a court upholds a statutory classification against an equal protection challenge if there is a plausible reason for the classification. (*Id.* at pp. 1200-1201.)

Costa contends he is similarly situated to those defendants entitled to conduct credit under the more generous provisions of the October 2011 version of section 4019, and a prospective-only application of section 4019 violates equal protection based on *In re Kapperman* (1974) 11 Cal.3d 542 (*Kapperman*). In *Kapperman*, the court

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labor as assigned by the sheriff [etc.]” (§ 4019, subd. (b).) He receives another one day deduction for “unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff [etc.]” (§ 4019, subd. (c).) Also, “if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.” (§ 4019, subd. (f).)

considered the constitutionality of former Penal Code section 2900.5, which limited prejudgment custody credit to those defendants delivered into the custody of the Director of Corrections on or after March 4, 1972, the effective date of the section. (*Kapperman, supra*, 11 Cal.3d at pp. 544-545.) *Kapperman* concluded the limitation violated equal protection because the Legislature based its classification on the state prison commitment date, a basis that was not reasonably related to a legitimate public purpose. (*Id.* at p. 545; see also *People v. Sage* (1980) 26 Cal.3d 498, 507-508 [statute allowing presentence conduct credits to misdemeanants but not felons violated equal protection; no rational basis to deny presentence conduct credit to detainee/felons].)

*Kapperman* does not apply in the present case. The primary focus of the presentence conduct credit scheme in section 4019 is the encouragement of ““minimal cooperation and good behavior by persons temporarily detained in local custody before they are convicted, sentenced, and committed.”” (*Dieck, supra*, 46 Cal.4th at p. 939.) In *In re Stinnette* (1979) 94 Cal.App.3d 800 (*Stinnette*), a provision of the Determinative Sentencing Act operative on July 1, 1977, authorized prisoners to receive conduct credit up to one-third of their sentences. The law also applied to prisoners sentenced under the prior law, which allowed them after July 1, 1977, to reduce the remaining portion of their sentence. The petitioner argued his right to equal protection was violated because “the entire sentence of a prisoner who began serving time on July 1, 1977, or thereafter may be reduced by one-third, while prisoners who began serving their sentence before that date may only earn one-third reductions of that part of their sentences still to be served after July 1, 1977.” (*Id.* at p. 805.) The *Stinnette* court rejected the petitioner’s argument, concluding “it is not a denial of equal protection for the Legislature to specify that [] punishment-lessening statutes are prospective only.” (*Id.* at pp. 805-806; see

*Kapperman, supra*, 11 Cal.3d at p. 546 [Legislature may specify prospective application for statutes lessening punishment for a particular offense to assure that penal laws will maintain their desired deterrent effect by carrying out the original prescribed punishment as written].) *Stinnette* also held the Legislature had a legitimate purpose in making the conduct credit prospective: “It is the desirable and legitimate purpose of motivating good conduct among prisoners so as to maintain discipline and minimize threats to prison security. Reason dictates that it is impossible to influence behavior after it has occurred. The classification involved is reasonable, and no equal protection violation is indicated.” (*Stinnette*, at p. 806.)

Here, the Legislature’s decision to increase potential conduct credits occurred after Costa had been released from custody on bail. As in *Stinnette*, Costa’s custodial behavior could not possibly have been influenced by additional credits. The classification as to Costa was thus reasonable, and no equal protection violation occurred. We need not address whether disparate treatment under section 4019 involving similarly situated detainees would be permissible. (See *People v. Borg* (2012) 204 Cal.App.4th 1528, 1537-1539 [prospective-only increase in conduct credits strikes a proper, rational balance between state’s fiscal concerns and public safety interests].) We therefore conclude Costa is not entitled to additional presentence conduct credit under the current version of section 4019.<sup>2</sup>

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<sup>2</sup> A potential issue not addressed by the parties is whether the negotiated plea took into consideration the period of presentence incarceration. Costa agreed to the proposed disposition, which included probation “under the terms and conditions set forth on the attached pages 6 and 7 that I have initialed and signed.” Page 6 of the “Terms and Conditions of Felony Probation” provides Costa would serve 90 days in county jail and receive credit for 13 days actual time served and six days of good time/work time credit. Because we conclude Costa is not entitled to additional credit under equal protection principles, we need not address or resolve this potential issue.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, ACTING P. J.

MOORE, J.