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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.

SANTIAGO CHAMU,

Defendant and Appellant.

G046423

(Super. Ct. No. 11HF2580)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Max De Liema, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Neil Auwarter, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

Pursuant to a written plea agreement, defendant Santiago Chamu pleaded guilty to the added nonstrike charge of grand theft from the person of another (Pen. Code, § 487, subd. (c); all further statutory references are to this code) in exchange for the dismissal of the charged robbery count (§ 211), a strike offense. Sentence was suspended and the court put defendant on three years' formal probation and ordered he serve 150 days in jail. The court denied defendant's request for half-time presentence custody credits and awarded him 48 days actual and 24 days conduct credits.

After defendant appealed we appointed counsel to represent him. Counsel filed a brief that set forth the facts of the plea bargain and the disposition. He did not argue against defendant but advised the court he had not found any arguments to present on defendant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) He suggested three issues to assist us in our independent review of the record.

First, does equal protection entitle a defendant who committed a crime before October 1, 2011, the operative date of the current version of section 4019, to the same amount of conduct credits awarded to defendants whose crimes occur after that date? Recently, in *People v. Brown* (2012) 54 Cal.4th 314, 328-330, the Supreme Court held equal protection did not require the retroactive application of a prior version of section 4019 because prisoners who served time before and after the effective date of the statute were not similarly situated. As it "explained, the important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response." (*Id.* at pp. 328-329.) The same reasoning applies in this case.

Second, may a defendant waive any right to half-time custody credits by agreeing to fewer credits under a plea agreement? As with any statutory right, a defendant may expressly waive entitlement to custody credits as long as it is knowing and

intelligent. (*People v. Johnson* (2002) 28 Cal.4th 1050, 1052, 1054-1055.) Here, defendant signed the written probation conditions awarding him 48 days actual and 24 days conduct credit and there is nothing in the record to suggest defendant did not understand what he signed.

Finally, does contending a credits waiver was unlawful constitute an attack on a plea agreement, requiring a certificate of probable cause in order for it to be cognizable on appeal? Because the credits were part of defendant's written plea agreement, claiming it was unlawful challenges its validity and is foreclosed by the absence of a certificate of probable cause. (§ 1237.5; *People v. Panizzon* (1996) 13 Cal.4th 68, 76.)

Defendant has not filed written argument on his own behalf despite being given 30 days to do so. We examined the entire record to determine if any arguable issues were present, including those suggested by counsel, and found none. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-442; *People v. Johnson* (1981) 123 Cal.App.3d 106, 111-112.)

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.