

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY KENNAN MONDS,

Defendant and Appellant.

G046766

(Super. Ct. No. 11HF0412)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Vickie L. Hix, Commissioner. Affirmed.

Esther K. Hong, 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, James D. Dutton and  
Meredith S. White, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \*

## INTRODUCTION

As of October 1, 2011, the rate at which a criminal defendant may accrue presentence custody credit changed. A defendant who committed a crime on or after October 1, 2011, may accrue two good conduct credit days for every two actual custody days. A defendant who committed a crime before October 1, 2011, accrues good conduct credit at the former rate of two days for every four days of actual custody.

Defendant Gregory Kennan Monds pleaded guilty to possession of a controlled substance. He was placed on probation in August 2011. In March 2012, defendant admitted violating his probation. The trial court reinstated defendant's probation and awarded him presentence custody credit at the rate in effect before the October 1, 2011 statutory amendment. Defendant challenges the trial court's refusal to calculate his good conduct custody credit at the higher accrual rate. We affirm.

The statutory language clearly states that the higher accrual rate applies prospectively only. We reject defendant's contention that the language of the statute is ambiguous. Further, the rule of lenity is not implicated in this case. Finally, we reject defendant's claim that a prospective-only application of the higher accrual rate violates equal protection. Although criminal defendants who committed the same crime before and after October 1, 2011, are similarly situated, a rational basis exists for treating them differently in terms of the accrual of their good conduct credit.

## PROCEDURAL HISTORY<sup>1</sup>

Defendant was charged with one felony count of possession of a controlled substance, in violation of Health and Safety Code section 11350, subdivision (a). The date of the offense was January 24, 2011. Defendant pleaded guilty on June 3, 2011. On

---

<sup>1</sup> Given the limited issue raised on appeal, we need not discuss the facts underlying defendant's crime.

August 12, 2011, the trial court suspended imposition of sentence and placed defendant on three years' formal probation.

A petition for a probation violation warrant was filed against defendant on January 24, 2012. On March 5, 2012, defendant admitted his probation violation; the trial court sentenced defendant and reinstated his probation on the same day. The court awarded defendant 36 days of actual custody credit, plus 18 days of good conduct credit, for a total of 54 days of presentence custody credit.

Defendant filed a motion to correct credits, arguing he was entitled to 72 total days of custody credit, with 36 days of actual custody credit and 36 days of good conduct credit. The trial court denied defendant's motion. Defendant timely appealed.

#### DISCUSSION

Before October 2011, defendants in local custody were eligible to earn good conduct credit at a rate of two days for every four days of actual custody. (Pen. Code, former § 4019, subd. (f).) Pursuant to an amendment to Penal Code section 4019, which was operative on October 1, 2011, the accrual rate for good conduct credit changed to two days for every two days of actual custody. (*Id.*, § 4019, subd. (f).) The unambiguous language of the statute makes it clear that the Legislature did not intend it to apply retrospectively: “The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp 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.” (*Id.*, § 4019, subd. (h).)

Defendant argues the language of Penal Code section 4019, subdivision (h) is ambiguous. The first sentence of subdivision (h) clearly states that the increased accrual rate applies prospectively only. The second sentence of subdivision (h) provides: “Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate

required by the prior law.” (Pen. Code, § 4019, subd. (h).) Defendant argues the two sentences of section 4019, subdivision (h), when read together, “point[] to two mutually exclusive possibilities: (1) that section 4019 only applies to individuals confined on or after October 1, 2011 and whose crimes were committed on or after that date; or (2) that section 4019 applies to individuals confined on or after October 1, 2011, even if their underlying crime[s] were committed before October 1, 2011. The language of the October 1, 2011 amendment to section 4019 is therefore ambiguous.” We disagree. As explained in prior opinions, the two sentences can be read together without creating an ambiguity.

As this court explained in *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 51, “to read the second sentence” of Penal Code section 4019, subdivision (h) as stating that a defendant earns day-for-day credit after October 1, 2011, no matter when the crime was committed, “renders meaningless the first sentence. This we cannot do.” Rather, this court concluded: “[S]ubdivision (h)’s first sentence reflects the Legislature intended the enhanced conduct credit provision to apply only to those defendants who committed their crimes on or after October 1, 2011. Subdivision (h)’s second sentence does not extend the enhanced conduct credit provision to any other group, namely those defendants who committed offenses before October 1, 2011, but are in local custody on or after October 1, 2011. Instead, subdivision (h)’s second sentence attempts to clarify that those defendants who committed an offense before October 1, 2011, are to earn credit under the prior law. However inartful the language of subdivision (h), we read the second sentence as reaffirming that defendants who committed their crimes before October 1, 2011, still have the opportunity to earn conduct credits, just under prior law. [Citation.] To imply the enhanced conduct credit provision applies to defendants who committed their crimes before the effective date but served time in local custody after the effective date reads too much into the statute and ignores the Legislature’s clear intent in subdivision (h)’s first sentence. [¶] We recognize the Legislature in drafting

subdivision h)'s second sentence used the word 'earned.' And it is impossible to earn presentence credits for an offense that has not yet been committed. But reading the first and second sentences together, the implication is the enhanced conduct credit provision applies to defendants who committed crimes before October 1, 2011, but who served time in local custody after that date. To isolate the verbiage of the second sentence would defy the Legislature's clear intent in subdivision (h)'s first sentence and contradict well-settled principles of statutory construction. In conclusion, we find the enhanced conduct credit provision applies *only* to those defendants who committed their crimes on or after October 1, 2011." (*People v. Rajanayagam, supra*, at p. 52, fn. omitted.)

Similarly, the court in *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1553, held: "In our view, the Legislature's clear intent was to have the enhanced rate apply *only* to those defendants who committed their crimes on or after October 1, 2011. [Citation.] The second sentence does not extend the enhanced rate to any other group, but merely specifies the rate at which all others are to earn conduct credits. So read, the sentence is not meaningless, especially in light of the fact the October 1, 2011, amendment to [Penal Code] section 4019, although part of the so-called realignment legislation, applies based on the date a defendant's crime is committed, whereas [Penal Code] section 1170, subdivision (h), which sets out the basic sentencing scheme under realignment, applies based on the date a defendant is sentenced."

We agree with *People v. Rajanayagam* and *People v. Ellis* that the second sentence of Penal Code section 4019, subdivision (h) reiterates that defendants who committed their crimes before October 1, 2011 will accrue good conduct credit at the rate specified under the earlier version of the statute. The second sentence of subdivision (h) does not create an ambiguity when read in conjunction with the first sentence of that subdivision.

Defendant also argues that the rule of lenity requires that we interpret Penal Code section 4019, subdivision (f), which was operative on October 1, 2011, to

apply irrespective of the date on which the underlying crime was committed. The rule of lenity provides: “When faced with an ambiguous statute and no extrinsic indicia of legislative intent, courts are required to construe a criminal law ‘as favorably to the defendant as its language and intent will reasonably permit.’ [Citation.]” (*People v. Douglas* (2000) 79 Cal.App.4th 810, 815.) The rule of lenity is a “‘tiebreaker’ when . . . there are two equally plausible interpretations of the law. [Citation.]” (*Ibid.*) As explained *ante*, the amendment to Penal Code section 4019 is not ambiguous, and, therefore, we need not consider any indicia of legislative intent beyond the language of the statute. The rule of lenity does not come into play in this case.

Finally, defendant argues a prospective-only application of Penal Code section 4019, subdivision (f) would violate equal protection. To prevail on an equal protection claim, defendant must show the state has adopted a classification affecting two similarly situated groups in an unequal manner, and no rational basis exists for doing so. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1199-1200.) Defendant has made the requisite showing as to the first prong of the equal protection analysis. “Defendants who committed offenses and earned conduct credit before the operative date of the statute are treated more harshly than those who committed the same crimes and earned conduct credit on or after October 1, 2011. The two groups are similarly situated in the sense that they committed the same offenses but are treated differently in terms of earning conduct credit based solely on the dates their crimes were committed. For purposes of receiving conduct credit, nothing distinguishes the status of a prisoner whose crime was committed after October 1, 2011, from one whose crime was committed before that date.” (*People v. Verba* (2012) 210 Cal.App.4th 991, 995-996; see also *People v. Rajanayagam, supra*, 211 Cal.App.4th at pp. 53-54.)

However, a rational basis exists for making the increased accrual rate for good conduct credit apply only to those crimes committed after a date certain. The classification created by the October 1, 2011, amendment to Penal Code section 4019

bears a rational relationship to cost savings, balanced against public safety, by increasing the accrual rate for good conduct credit, and thereby decreasing the time certain defendants will spend in custody, while ensuring that defendants are punished according to the sanction in effect as of the date their crime was committed. (See *People v. Rajanayagam*, *supra*, 211 Cal.App.4th at p. 55; *People v. Verba*, *supra*, 210 Cal.App.4th at pp. 996-997.)

*In re Kapperman* (1974) 11 Cal.3d 542, on which defendant relies, is distinguishable. In that case, the California Supreme Court considered the constitutionality of Penal Code section 2900.5, which provides for accrual of presentence custody credit based on the actual number of days served. Former subdivision (c) of section 2900.5 provided that the presentence credit could only be earned by those prisoners ““who are delivered into the custody of the Director of Corrections on or after the effective date of this section [i.e. March 4, 1972].”” (*In re Kapperman*, *supra*, at p. 544, fn. 1.) Because the defendant was delivered to the custody of the Director of Corrections before March 4, 1972, he was not entitled to credit for actual days served before his sentence was imposed. (*Id.* at p. 545.) The court concluded section 2900.5, former subdivision (c) violated the equal protection clauses of the federal and state Constitutions because it treated two classes of similarly situated prisoners differently, without a rational basis for doing so. (*In re Kapperman*, *supra*, at p. 545.)

*In re Kapperman*, however, dealt with credit for time actually spent in confinement before sentence was imposed, rather than, as in this case, additional credit for a defendant’s good conduct while confined. All prisoners affected by the statutory change addressed in *In re Kapperman* were similarly situated but were treated differently, meaning that some received presentence custody credit while others did not, based solely on the date their prison confinement began. No legitimate state interest justified the denial of actual days of credit to some prisoners but not to others. As

explained *ante*, in the present case, a different conclusion results from a consideration of both prongs of the equal protection analysis.

DISPOSITION

The postjudgment order is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.