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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.

JOHN BARTON MURLAND,

Defendant and Appellant.

G047247

(Super. Ct. No. 30-2011-00523248)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Carl Biggs, Judge. Affirmed.

Frank Ospino, Public Defender, Jean Wilkinson, Chief Deputy Public Defender, Mark Brown, Assistant Public Defender, and Miles David Jessup, Deputy Public Defender, for Defendant and Appellant.

Tony Rackauckas, District Attorney, and Brian F. Fitzpatrick, Deputy District Attorney, for Plaintiff and Respondent.

On October 7, 2011, appellant pleaded guilty to and was sentenced for a commercial burglary he had committed about three weeks earlier, on September 18. In

between, on October 1, a statutory amendment that allows inmates to accrue presentence conduct credits at an enhanced rate became effective. Appellant contends he is entitled to receive conduct credits at that enhanced rate for the seven days he was in custody between the time the amendment became effective and the time he was sentenced. Following this court's opinion in *People v. Rajanayagam* (2012) 211 Cal.App.4th 42 (*Rajanayagam*), we reject that contention and affirm the trial court's decision to award appellant conduct credits at the preamendment rate.

DISCUSSION

Penal Code section 4019 allows inmates to receive conduct credit (for work and good behavior) while they are in custody prior to sentencing.¹ Historically, the statute entitled defendants to “one-for-two conduct credits, which is two days for every four days of actual time served in presentence custody. [Citation.]” (*Rajanayagam, supra*, 211 Cal.App.4th at p. 48.) But in light of the state's budget crisis, the Legislature began rethinking that formula in 2010. (*Ibid.*) As part of the Criminal Justice Realignment Act of 2011 (Realignment Act), the Legislature amended section 4019 to allow defendants to earn presentence conduct credit at the rate of one-for-one. (*Id.* at p. 49; § 4019, subd. (f) [“It is the intent of the Legislature that 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.”].)

However, that amendment did not take effect until October 1, 2011. (*Rajanayagam, supra*, 211 Cal.App.4th at pp. 49-50.) And, the Legislature made it clear that it did not intend the amendment to be applied retroactively. Subdivision (h) of section 4019 expressly states that the credit rate increase provided for in the Realignment Act “shall apply *prospectively* and shall apply to prisoners who are confined to a county jail . . . for a crime committed on or after October 1, 2011. Any days earned by a

¹ All further statutory references are to the Penal Code.

prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.” (§ 4019, subd. (h), italics added.)

Utilizing the preamendment rate, the trial court in this case awarded appellant 10 days of presentence conduct credit, based on 20 days of actual custody, for a total of 30 days credit. Appellant admits the preamendment rate applies for the time he spent in custody from the date of his offense on September 18 until September 30, 2011. However, he contends, both as a matter of statutory construction and equal protection, he should be given the enhanced credit rate for the seven days he was in custody from October 1 to October 7, the day he was sentenced.

That would result in appellant receiving an additional two days of presentence conduct credit, but as this court explained in *Rajanayagam*, the standard principles of statutory construction do not support that result. The second sentence of section 4019, subdivision (h) does imply that conduct credits should be awarded at the enhanced rate for time spent in custody after October 1, 2011. But that would render the provision’s first sentence regarding prospective application meaningless, which would contravene the well-established tenet that statutes should be construed in a manner so as to give meaning to *all* of their provisions. (*Rajanayagam, supra*, 211 Cal.App.4th at p. 51.)

Appellant’s proposed construction would also undermine the Legislature’s intent, as reflected in the first sentence, that the enhanced credit rate shall apply only to those defendants who committed their crimes on or after October 1, 2011. “To imply the enhanced conduct credit provision applies to defendants who committed their crimes before [that] date but served time in local custody after [that] date reads too much into the statute and ignores the Legislature’s clear intent in subdivision (h)’s first sentence.” (*Rajanayagam, supra*, 211 Cal.App.4th at p. 52, fn. omitted.)

Appellant points out that, in deciding a 2010 amendment to section 4019 should be applied prospectively only, our Supreme Court in *People v. Brown* (2012) 54

Cal.4th 314 (*Brown*) surmised that to apply the amendment in that fashion would result in defendants whose custody overlapped the statute's operative date earning conduct credit at two different rates. (*Id.* at p. 322.) Viewed in isolation, that statement does, by extension, support appellant's argument in this case. But appellant admits the statement was not necessary to any of the issues presented in *Brown*. It was dicta and is not binding for purposes of this case. (*People v. Nguyen* (2000) 22 Cal.4th 872, 879.)

Moreover, whereas "in *Brown* the Legislature did not expressly declare whether the . . . 2010 amendment was to apply retroactively or prospectively . . . [h]ere, the Legislature did expressly state the current version of section 4019 is to apply prospectively only to defendants who commit their offenses on or after October 1, 2011." (*Rajanayagam, supra*, 211 Cal.App.4th at p. 52, fn. 4.) Consistent with that expression, we interpret section 4019 and the enhanced credit provisions contained therein as applying only to such defendants. Give that appellant committed his crime before October 1, 2011, he does not come within the scope of those provisions. (*Id.* at p. 52; accord, *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1549-1551.)

In appellant's opinion, that creates an equal protection problem because there can be no justification for awarding defendants conduct credits at different rates based on the date they committed their crimes. Again, *Rajanayagam* is dispositive of appellant's claim. In that case, we acknowledged "the current version of section 4019 creates a classification that affects two similarly situated groups in an unequal manner. [Citation.]" (*Rajanayagam, supra*, 211 Cal.App.4th at p. 54.) Nevertheless, recognizing that one of the primary purposes of the Realignment Act was to reduce prison spending, we found the statute was rationally related to that objective.

Specifically, we held, "[I]n choosing October 1, 2011, as the effective date of [the credit rate increase], the Legislature took a measured approach and balanced the goal of cost savings against public safety. The effective date was a legislative determination that its stated goal of reducing corrections costs was best served by

granting enhanced conduct credits to those defendants who committed their offenses on or after October 1, 2011. To be sure, awarding enhanced conduct credits to everyone in local confinement would have certainly resulted in greater cost savings than awarding enhanced conduct credits to only those defendants who commit an offense on or after the amendment's effective date. But that is not the approach the Legislature chose in balancing public safety against cost savings. [Citation.] Under the very deferential rational relationship test, we will not second-guess the Legislature and conclude its stated purpose is better served by increasing the group of defendants who are entitled to enhanced conduct credits when the Legislature has determined the fiscal crisis is best ameliorated by awarding enhanced conduct credit to only those defendants who committed their offenses on or after October 1, 2011.” (*Rajanayagam, supra*, 211 Cal.App.4th at pp. 55-56.)

Instead, *Rajanayagam* determined the Legislature's decision to apply section 4019 prospectively to defendants who were confined for crimes committed on or after October 1, 2011 was fully consistent with the constitutional guarantee of equal protection. (*Rajanayagam, supra*, 211 Cal.App.4th at pp. 53-56.) Every other published decision that has considered the issue has concluded similarly. (*People v. Verba* (2012) 210 Cal.App.4th 991, 994-997; *People v. Kennedy* (2012) 209 Cal.App.4th 385, 397-400; *People v. Ellis, supra*, 207 Cal.App.4th at pp. 1551-1553.) For the reasons explained in those decisions, and consistent with our holding in *Rajanayagam*, we reject appellant's equal protection argument and uphold the trial court's decision to award him conduct credit at the rate of one day for every two days he spent in actual custody. There is no basis for disturbing the trial court's decision in that regard.

DISPOSTION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.