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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIUS JAY ROBINSON,

Defendant and Appellant.

H037743, H038460

(Monterey County

Super. Ct. No. SS111497A)

Pursuant to a plea agreement, Julius Robinson (appellant) pleaded no contest to one count of possession of cocaine for sale (Health & Saf. Code, § 11351), admitted that he had a prior drug conviction within the meaning of Health and Safety Code section 11370.2,¹ and that he had a prior strike conviction for robbery (Pen. Code, § 1170.12, subd. (c)(1)). In exchange for his plea, appellant was promised a seven year prison term. Appellant filed a timely notice of appeal from the sentencing hearing. However, while that appeal was pending, counsel filed a motion for an order "correcting the erroneous

¹ Health and Safety Code section 11370.2 provides that any defendant who is convicted of certain drug offenses, including violating Health and Safety Code section 11351, with respect to a substance containing cocaine where the substance exceeds one kilogram, shall in addition to any other punishment authorized by law have their sentence enhanced with an additional three years. (Stats. 1998, ch. 936, § 1, eff. Sept. 28, 1998.)

computation of presentence credits." That motion was denied; thereafter appellant filed a notice of appeal from that denial on June 14, 2012.²

As the sole issue on appeal concerns the award of presentence custody credits, the facts underlying appellant's case are not relevant to the appeal. However, briefly, we set forth the proceedings from the sentencing hearing that occurred on December 8, 2011, the hearing on appellant's motion to correct his custody credits, and other pertinent facts.

Facts and Proceedings Below

The crime to which appellant entered his no contest plea was alleged to have occurred on August 9, 2011.

When the court imposed the agreed upon seven year prison term, the court awarded appellant 181 days of presentence credit consisting of 121 actual days and 60 days of conduct credits. According to the probation officer's report, appellant committed his offense on August 9, 2011; he was arrested on August 10, 2011. The probation officer calculated appellant's actual days in custody as 121 days and calculated his presentence conduct credits at the rate of 33 percent.

As noted, subsequently, appellant filed a motion to correct his custody credits. In the motion, appellant argued that an amendment to Penal Code section 4019 that became operative on October 1, 2011, had to be applied to all his presentence custody by virtue of the equal protection clauses of the state and federal Constitutions; alternatively, appellant argued that amendments to Penal Code sections 2933 and 4019 should be applied to all the days he was in custody after October 1, 2011.

When the trial court denied the motion to correct appellant's custody credits, the court indicated that since a notice of appeal had been filed, it lacked jurisdiction to hear

² On July 11, 2012, this court ordered that both appeals be considered together for the purposes of briefing, oral argument and decision. The issue set forth in the first notice of appeal—use of appellant's prior strike conviction to enhance his sentence—is not presented in appellant's opening brief. Accordingly, we must assume that appellant has abandoned that issue.

appellant's request to correct his custody credits. However, the court stated that even if it had jurisdiction, it would deny the motion.

On appeal, appellant argues that pursuant to principles of statutory construction and equal protection, he is entitled to additional presentence conduct credits for the period of custody he served on or after October 1, 2011.

Before we address this issue, we note that appellant spends several pages belatedly arguing that this issue is cognizable on appeal. As we shall explain, we find many reasons for concluding that this issue is cognizable on appeal.

"There is no constitutional right of appeal from a judgment or order in criminal cases; rather the right of appeal is statutory. [Citations.]" (*People v. Connor* (2004) 115 Cal.App.4th 669, 677.) Penal Code section 1237, subdivision (a) permits a defendant to appeal "[f]rom a final judgment of conviction except as provided in Section 1237.1" In turn, Penal Code section 1237.1 provides: "No appeal shall be taken by the defendant from a judgment of conviction on the ground of an error in the calculation of presentence custody credits, unless the defendant first presents the claim in the trial court at the time of sentencing, or if the error is not discovered until after sentencing, the defendant first makes a motion for correction of the record in the trial court." However that statute "does not require defense counsel to file [a] motion to correct a presentence award of credits in order to raise that question on appeal when other issues are litigated on appeal"; if there are no other issues, however, "the filing of a motion in the trial court is a prerequisite to raising a presentence credit issue on appeal." (*People v. Acosta* (1996) 48 Cal.App.4th 411, 427–428, fn. omitted.) Of course, in this case appellant did file a motion to "correct" his presentence custody credits, which was denied. Even if appellant had not filed that motion, "Penal Code section 1237.1 does not preclude a defendant from raising, as the sole issue on an appeal, a claim his or her presentence custody credits were calculated pursuant to the wrong version of the applicable statute." (*People v. Delgado* (2012) 210 Cal.App.4th 761, 763.)

Furthermore, a trial court's failure to award the correct amount of presentence custody credit due to miscalculation or legal error is a jurisdictional defect that renders the sentence an unauthorized sentence. (*People v. Taylor* (2004) 119 Cal.App.4th 628, 647.) It is settled that an unauthorized sentence is "subject to judicial correction whenever the error [comes] to the attention of the trial court or a reviewing court. [Citations.]" (*People v. Serrato* (1973) 9 Cal.3d 753, 763, italics added, disapproved on other grounds in *People v. Fosselman* (1983) 33 Cal.3d 572; see *People v. Karaman* (1992) 4 Cal.4th 335, 345-346, fn. 11 [even after jurisdiction has expired, trial court may correct judicial error that is void on its face]; *People v. Fares* (1993) 16 Cal.App.4th 954, 958 [no time limit to seek correction]; e.g., *Wilson v. Superior Court* (1980) 108 Cal.App.3d 816, 818-819 [trial court had jurisdiction to correct improper calculation of conduct credits long after time for filing appeal had expired].)

Moreover, an order declining to correct an allegedly unauthorized sentence, such as the denial of appellant's motion in the present case affects appellant's substantial rights and is appealable under Penal Code section 1237, subdivision (b).

That being said, we note that when appellant changed his plea, he executed a "WAIVER OF RIGHTS PLEA OF GUILTY NO CONTEST" form in which he acknowledged that he waived and gave up "all rights regarding state and federal writs and appeals" including "the right to appeal [his] conviction, the judgment, and any other orders previously issued by this court." In addition, he agreed "not to file any collateral attacks on [his] conviction or sentence at any time in the future."

Nevertheless, appellant is not barred from challenging an alleged misapplication of conduct credits on appeal where, as here, the plea agreement and waiver of appellate rights made no mention of conduct credits. (*People v. Vargas* (1993) 13 Cal.App.4th 1653, 1662–1663; accord *People v. Panizzon* (1996) 13 Cal.4th 68, 85 [waiver will not be construed to bar the appeal of sentencing errors occurring subsequent to plea especially

when the defendant is attempting to appeal sentencing issues left unresolved by the particular plea agreement].)

Discussion

A criminal defendant is entitled to accrue both actual presentence custody credits under section 2900.5³ and conduct credits under section 4019 for a period of incarceration prior to sentencing. Conduct credits may be earned under 4019 by performing additional labor (§ 4019, subd. (b)) and by an inmate's good behavior. (§ 4019, subd. (c).) In both instances, the section 4019 credits are collectively referred to as conduct credits. (*People v. Dieck* (2009) 46 Cal.4th 934, 939, fn. 3.) The court is charged with awarding such credits at sentencing. (§ 2900.5, subd. (a).)

Before January 25, 2010, conduct credits under section 4019 could be accrued at the rate of two days for every four days of actual time served in pre-sentence custody. (Stats. 1982, ch. 1234, § 7, p. 4554 [former § 4019, subd. (f)].) Effective January 25, 2010, the Legislature amended section 4019 in an extraordinary session to address the state's ongoing fiscal crisis. Among other things, Senate Bill No. 3X 18 amended section 4019 such that defendants could accrue custody credits at the rate of two days for every two days actually served, twice the rate as before except for those defendants required to register as a sex offender, those committed for a serious felony (as defined in § 1192.7), or those who had a prior conviction for a violent or serious felony. (Stats. 2009–2010, 3d Ex.Sess., ch. 28, §§ 50, 62 [former § 4019, subds. (b), (c), & (f)].)

Effective September 28, 2010, section 4019 was amended again to restore the presentence conduct credit calculation that had been in effect prior to the January 2010 amendments, eliminating one-for-one credits. (Stats. 2010, ch. 426, § 2.) By its express terms, the newly created section 4019, subdivision (g), declared these September 28, 2010 amendments applicable only to inmates confined for a crime committed on or after

³ All unspecified section references are to the Penal Code.

that date, expressing legislative intention that they have prospective application only. (Stats. 2010, ch. 426, § 2.)

The current version of section 4019 (hereafter October 1 amendment) was in effect and operative beginning October 1, 2011, and at the time of sentencing in this case on December 8, 2011. (Stats. 2011-2012, 1st Ex. Sess., ch. 12, § 35, pp. 5976-5977, eff. Sept. 21, 2011, operative Oct. 1, 2011.)⁴ That section states in pertinent part "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); see § 4019, subds. (b)-(e).) This award of custody credits is sometimes referred to as one-for-one credits. Nevertheless, subdivision (h) of section 4019 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 to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011 [hereafter, the first sentence]. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." (Hereafter, the second sentence.)

The trial court calculated appellant's conduct credits under the September 28, 2010 revision of the presentence custody credit law; as noted, that version was in effect when appellant committed his crime. Under that version, a defendant with a current or prior

⁴ Initially, the 2011 changes to the accrual of conduct credit were made applicable to prisoners confined for crimes committed on or after July 1, 2011. (Stats. 2011, ch. 15, § 482, pp. 497-498, eff. Apr. 4, 2011, operative Oct. 1, 2011 [former § 4019, subd. (h)].) Further amendments to section 4019 that were enacted before that legislation became operative made those changes applicable to prisoners confined for crimes committed on or after October 1, 2011. (See Stats. 2011, ch. 15, § 636, p. 622, eff. Apr. 4, 2011; Stats. 2011, ch. 39, §§ 53, 68, pp. 1730-1731, 1742, eff. June 30, 2011, operative Oct. 1, 2011; Stats. 2011, ch. 40, § 3, p. 1748, eff. June 30, 2011; Stats. 2011-2012, 1st Ex. Sess., ch. 12, § 35, eff. Sept. 21, 2011, operative Oct. 1, 2011.)

serious or violent felony conviction was entitled to two days of conduct credit for every four days of presentence custody. (Former §§ 2933, 4019 (Stats.2010, ch. 426, § 2).)⁵

With this background in mind we turn to appellant's contentions on appeal.

Statutory Construction

Appellant argues that in terms of statutory construction the current version of section 4019 must be construed as applying to defendants who serve their custody on or after October 1, 2011.

Appellant concedes that the first sentence of subdivision (h) of section 4019 indicates that the October 1 amendment is to apply only to crimes committed after October 1, 2011, but argues that the second sentence is inconsistent with this construction, thus creating an ambiguity. We are not persuaded that appellant's arguments are correct.

"[I]n reviewing the text of a statute, [courts] must follow the fundamental rule of statutory construction that requires every part of a statute be presumed to have some effect and not be treated as meaningless unless absolutely necessary. 'Significance should be given, if possible, to every word of an act. [Citation.] Conversely, a construction that renders a word surplusage should be avoided. [Citations.]' [Citations.]" (*People v. Arias* (2008) 45 Cal.4th 169, 180.) In addition, "[w]hen a statute is capable of more than one construction, '[w]e must . . . give the provision a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the

⁵ For a brief period, effective September 28, 2010, section 2933 was amended to include a subdivision (e), which provided that an eligible defendant sentenced to prison could receive one day of conduct credit for every day he was in presentence custody. (Stats. 2010, ch. 426, § 1, p. 2087.) However, a defendant who had a prior serious felony conviction, such as appellant, was not subject to this provision (former § 2933, subd. (e)(3); Stats.2010, ch. 426, § 1), but was instead awarded conduct credit consisting of two days credit for every four days of presentence custody (former § 4019; Stats. 2011, ch. 39, § 53). Section 2933 has since been amended to delete subdivision (e). (Stats. 2011–2012, 1st Ex.Sess. 2011, ch. 12, § 16, p. 5963.)

lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity." ' [Citations.]" (*In re Reeves* (2005) 35 Cal.4th 765, 771, fn. 9.) Finally, "under the traditional 'rule of lenity,' language in a penal statute that truly is susceptible of more than one reasonable construction in meaning or application ordinarily is construed in the manner that is more favorable to the defendant. [Citation.]" (*People v. Canty* (2004) 32 Cal.4th 1266, 1277.)

"When construing a statute, our primary task is to ascertain the Legislature's intent. [Citation.] We begin our task by determining whether the language of the statute is ambiguous. [Citation.] A statutory provision is ambiguous if it is susceptible of two reasonable interpretations. [Citation.] ' "If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs." [Citation.]' [Citation.]" (*People v. Dieck, supra*, 46 Cal.4th at pp. 939-940.)

In *People v. Ellis* (2012) 207 Cal.App.4th 1546 (review den. Oct. 31, 2012), with respect to subdivision (h) of section 4019, the Fifth District Court of Appeal concluded: "[T]he 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 section 4019, although part of the so-called realignment legislation, applies based on the date a defendant's crime is committed, whereas section 1170, subdivision (h), which sets out the basic sentencing scheme under realignment, applies based on the date a defendant is sentenced."⁶ (*Id.* at p. 1553.)

⁶ Section 1170, subdivision (h)(6), now provides: "The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011."

The Court of Appeal, Fourth District, Division 3, agrees with *Ellis*. In *People v. Rajanayagam* (2012) 211 Cal.App.4th 42 (*Rajanayagam*) (review denied Feb. 13, 2013), the court rejected an argument that the second sentence of section 4019, subdivision (h), "implies any days earned by a defendant *after* October 1, 2011, shall be calculated at the rate required by the current law, *regardless of when the offense was committed*." (*Id.* at p. 51.) The court concluded that such an interpretation would render meaningless the language in the first sentence (*ibid.*), which provides that the changes to the accrual of presentence conduct credit "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." (§ 4019, subd. (h).) Accordingly, the court concluded that adopting the defendant's interpretation would violate an elementary rule requiring courts, if possible, ascribe meaning to every word, phrase, and sentence of a statute and to avoid interpretations that render some words superfluous. (*Rajanayagam, supra*, 211 Cal.App.4th at p. 51.)

The *Rajanayagam* 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." (*Id.* at p. 52, fn. omitted.)

Certainly, "[i]t is a settled principle of statutory construction, that courts should 'strive to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous.' [Citations.] We harmonize statutory provisions, if possible, giving each provision full effect. [Citation.]" (*In re C.H.* (2011) 53 Cal.4th 94, 103.)

On the other hand, appellate courts may not "rewrite the clear language of [a] statute to broaden the statute's application." (*In re David* (2012) 202 Cal.App.4th 675, 682; See *People v. Statum* (2002) 28 Cal.4th 682, 692 [a court may not rewrite a statute to conform to a presumed intent that is not expressed].)

As confirmed by the Supreme Court in *People v. Brown* (2012) 54 Cal.4th 314, 322, footnote 11, the first sentence means just what it says, but the necessary corollary of that sentence is that it does not apply to crimes committed prior to October 1, 2011; and the necessary implication is that for crimes committed prior to October 1, 2011, the statutory scheme that was displaced by the new terms of section 4019 continues to apply. It is axiomatic that since the new credit scheme applies prospectively (per the first sentence), everyone in jail prior to October 1, 2011, is there for a crime committed prior to that date, and subject to whatever credit scheme was operating at the time. However, to hold that appellant is entitled to the benefit of the October 1 amendment for days spent in custody after October 1, 2011, would require that we write an entire sentence into section 4019. That is, after the first sentence, we would have to add—However, if a defendant has not been sentenced by October 1, 2011, for a crime he or she committed before October 1, 2011, he or she is entitled to one-for-one credits for any time spent in custody after that date up to and including the date of sentencing. As confirmed by the Supreme Court in *Brown*, the critical date in the statute is the date of the offense, and not the date when the presentence custody is served. (*Id.* at p. 322, fn. 11.)

A number of courts, including this one, have concluded that as to crimes committed before October 1, 2011, the current version of section 4019 is not applicable

and former law governs calculation of conduct credit. (*People v. Hul* (2013) 213 Cal.App.4th 182, 186-187; *Rajanayagam, supra*, 211 Cal.App.4th at p. 51; *People v. Verba* (2012) 210 Cal.App.4th 991, 993; *People v. Ellis, supra*, 207 Cal.App.4th at p. 1553; see also *People v. Kennedy* (2012) 209 Cal.App.4th 385, 400 (*Kennedy*).) Again, we reach the same conclusion. In so doing, we reject appellant's claim that as a matter of statutory construction, he is entitled to the enhanced one-for-one credits for the time he spent in custody after October 1, 2011, up to and including the day he was sentenced.

Equal Protection

Appellant argues that in terms of an equal protection analysis our Supreme Court's decisions in *People v. Brown, supra*, 54 Cal.4th 314 (*Brown*) and *People v. Lara* (2012) 54 Cal.4th 896 (*Lara*), support his request for additional credits.

In *Brown*, the California Supreme Court addressed contentions that the version of section 4019 effective on January 25, 2010, must be held to apply retroactively, in part because prospective application would violate the equal protection clauses of the state and federal Constitutions. (*Brown, supra*, 54 Cal.4th at p. 319.) The court stated: "The concept of equal protection recognizes that persons who are *similarly situated* with respect to a law's legitimate purposes must be treated equally. [Citation.] Accordingly, "[t]he 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." [Citation.] "This initial inquiry is not whether persons are similarly situated for all purposes, but "whether they are similarly situated for purposes of the law challenged." [Citation.]" (*Id.* at p. 328.) The *Brown* court went on to say, "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. *That*

prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows." (*Id.* at pp. 328-329, italics added.)⁷

In *Lara*, *supra*, 54 Cal.4th 896, the California Supreme Court noted in a footnote that the same equal protection analysis applies to the current version of section 4019. (*Id.* at p. 906, fn. 9.) Specifically, citing to the *Brown* court's equal protection analysis the *Lara* court noted, "prisoners who serve their pretrial detention before such a law's effective date, and those who serve their detention thereafter, are not similarly situated with respect to the law's purpose. [Citation.]" (*Ibid.*)

Appellant contends that in finding that defendants "who serve their detention *before and after* the October 2011's effective date are *not* similarly situated, both the *Brown* and *Lara* courts were, for all intents and purposes, recognizing that defendant's who serve their time *after* that law's effective date *are* similarly situated because they will be motivated to engage in productive work and maintain good behavior so that they can take advantage of the opportunity to earn enhanced credits. Since the question of motivation formed the lynch pin for the high court's resolution of the similarly situated prong of the equal protection issue, it follows that defendants who are in custody *after* the law's effective date and ipso facto *are* motivated to earn the increased credits are constitutionally entitled to the additional credits unless there is a rational basis for their disparate treatment even when a credit enhancing law operates prospectively."⁸

⁷ In *Brown*, the court concluded that "prisoners whose custody overlapped the statute's operative date . . . earned credit at two different rates." (*Brown, supra*, 54 Cal.4th at pp. 320, 322.) That conclusion is inapplicable here, as the court was addressing the amendment to section 4019 that became effective January 25, 2010, not the current section 4019. (*Id.* at p. 318; Stats. 2009, 3d Ex. Sess. 2009–2010, ch. 28, § 50.) The former statute did not contain an express provision regarding prospective application, as it does now.

⁸ We point out that even if appellant was aware of the October 1, 2011 amendment to section 4019, from the plain language of the statutory amendment he would have understood that it did not apply to him because he committed his offense before October 1, 2011.

Appellant asserts that there is no rational basis for depriving him of the enhanced credits for custody he served on or after October 1, 2011. We disagree.

Two appellate courts have concluded that as to prisoners confined in a county jail after October 1, 2011, for crimes committed before October 1, 2011, they are similarly situated to prisoners who committed their crimes after October 1, 2011, and are confined in a county jail, but determined there was a rational basis for the classifications. (*People v. Verba, supra*, 210 Cal.App.4th at pp. 995–997 (*Verba*);⁹ *Rajanayagam, supra*, 211 Cal.App.4th at pp. 53–55 [the two groups are serving time together in local presentence custody thus the two groups are similarly situated].)

Even assuming the two groups of defendants who are in custody together—those who committed their crimes before October 1, 2011, and those who committed their crimes after October 1, 2011—are similarly situated for purposes of the October 1, 2011, amendment to section 4019, we conclude again, as we have done in the past (*Kennedy, supra*, 209 Cal.App.4th at pp. 398-400)¹⁰ that the classifications bear a rational relationship to a legitimate state purpose. Similar to the courts in *Verba, supra*, 210 Cal.App.4th 991, 995–997 and *Rajanayagam, supra*, 211 Cal.App.4th at pp. 54–55, we conclude that there are several legitimate reasons for making the enhanced presentence conduct credits applicable only to those who commit their crimes on or after October 1,

⁹ In *Verba*, the defendant was sentenced before the operative date of the 2011 amendment to section 4019. (*Verba, supra*, at p. 993.) Accordingly, he was not in custody after October 1, 2011.

¹⁰ Appellant contends that this court's decision in *People v. Kennedy, supra*, 209 Cal.App.4th 385, was wrongly decided because we "misread" the holding in *Brown*. At issue in *Kennedy* was the defendant's contention that he was entitled to the *retroactive* application of the October 1, 2011 amendment. (*Id.* at p. 395.) We applied the *reasoning* of *Brown* to that argument, not the holding. (*Id.* at pp. 396-397.) As to the period of time that the defendant spent in custody after October 1, 2011, we assumed that appellant was similarly situated to defendants who had committed their crimes after October 1, 2011, and were in custody, but found that there was a rational basis for denying him the enhanced credits. (*Id.* at pp. 397-398.)

2011, including cost savings measured against public safety (*Verba, supra*, 210 Cal.App.4th at pp. 996–997; *Rajanayagam, supra*, 211 Cal.App.4th at p. 55), maintaining the desired deterrent effect of penal laws by carrying out the punishment in effect at the time defendants commit their offenses (*Kennedy, supra*, 209 Cal.App.4th at p. 398, *Verba, supra*, 210 Cal.App.4th at p. 997), and the Legislature's right to control the risk of new legislation by limiting its application (*Verba, supra*, 210 Cal.App.4th at p. 997).

Accordingly, we reject appellant's equal protection challenge to the current version of section 4019.¹¹

In conclusion, for the reasons outlined *ante*, we reject appellant's claim that he is entitled to have the current version of section 4019 applied to his presentence custody for all days he was in jail from October 1, 2011, until the day he was sentenced.

Disposition

The judgment is affirmed.

¹¹ Since we have addressed this issue, it is unnecessary to address appellant's alternative argument that if we were to have found this issue forfeited, his trial counsel was ineffective in failing to request additional credits at the time of the original sentencing hearing.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.