

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

DAREN LEWIS WRIGHT,

Defendant and Appellant.

H037808

(Santa Clara County

Super. Ct. Nos. CC943481, C1088514)

Defendant Daren Lewis Wright entered into a plea agreement under which he pleaded no contest to numerous counts in two separate cases in exchange for a specified prison term of 15 years. On appeal, his only contentions are that he was entitled to additional conduct credit and that the abstract of judgment must be corrected. The Attorney General concedes that the abstract requires correction. We reject defendant's claim for additional conduct credit.

I. Background

The facts of defendant's offenses are immaterial to the issues on appeal. His sentence arose from the settlement of two separate cases.

He was charged by information in case No. CC943481 (case 481) with six counts of second degree burglary (Pen. Code, §§ 459, 460, subd. (b)),¹ two counts of receiving stolen property (§ 496, subd. (a)), petty theft with a prior (§ 666), possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). The case 481 information also alleged that he had suffered three prison priors (§ 667.5, subd. (b)) and one strike prior (§§ 667, subds. (b)-(i), 1170.12). All of the crimes charged in case 481 occurred in 2009.

Defendant was charged by information in case No. C1088514 (case 514) with nine counts of second degree burglary, three counts of receiving stolen property, four counts of grand theft (§§ 484, 487, subd. (a)), two counts of driving or taking a vehicle (Veh. Code, § 10851, subd. (a)), resisting arrest (§ 148, subd. (a)(1)), and altering a key (§ 466). The information in case 514 further alleged that defendant had committed a felony while on bail (§ 12022.1), and had suffered two prison priors and one strike prior. The crimes charged in case 514 occurred between July and November 2010.

In July 2011, defendant entered into a plea agreement in case 481. He pleaded no contest to four of the burglary counts (counts 1, 9, 11, and 12) and to the being under the influence count (count 7) and admitted the prison prior and strike prior allegations in exchange for dismissal of the remaining counts and a specified sentence of six years and eight months.

In August 2011, defendant entered into a plea agreement in case 514. He pleaded no contest to two of the burglary counts (counts 1 and 7), one driving or taking a vehicle count (count 11), and one grand theft count (count 19), and admitted the on bail enhancement allegation and the strike prior and prison prior allegations in exchange for dismissal of the remaining counts and a specified sentence. The specified sentence was

¹ Subsequent statutory references are to the Penal Code unless otherwise specified.

eight years and four months consecutive to his sentence in case 481 for a total prison term of 15 years.

Defendant was sentenced on December 16, 2011 to a prison term of 15 years for both cases. For two of the 2009 counts, defendant received conduct credit calculated under the September 2010 version of section 4019. His actual custody had occurred in 2009, 2010, and 2011. For the other 2009 counts, he had no actual custody credit. For two of the 2010 counts, defendant had just one day of actual custody and received no conduct credit. For the other 2010 counts, defendant had no days of actual custody credit. This was due to the fact that the second case was sentenced consecutively to the first case. Defendant timely filed a notice of appeal from the judgment and obtained a certificate of probable cause.

II. Discussion

A. Conduct Credit

Until January 2010, section 4019 provided that a defendant would receive two days of conduct credit for every four days of actual custody. From January 2010 until September 2010, section 4019 temporarily increased this to two days of conduct credit for every two days of actual custody, but this increase did not apply to a defendant who had suffered a prior conviction for a serious felony. (*People v. Brown* (2012) 54 Cal.4th 314, 317-318 (*Brown*); Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 50.) In September 2010, section 4019 was again amended and section 2933 was also amended with regard to presentence conduct credit. These statutes also provided that a defendant with a prior serious felony conviction would receive two days of conduct credit for every four days of actual custody. (Stats. 2010, ch. 426, §§ 1, 2; former § 2933, subd. (e).) A new version of section 4019 became operative in October 2011. This version provided for two days of conduct credit for every *two* days of actual custody, and it did not exclude from its ambit a defendant with a prior serious felony conviction. (Stats. 2011, ch. 15, § 482;

Stats. 2011, ch. 39, § 53; Stats. 2011-2012, 1st Ex. Sess., ch. 12, § 35.) However, the October 2011 version of section 4019 provided that it was prospective only. “The changes in this section as enacted by the act that added this subdivision 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 the effective date of that act.*” (§ 4019, subd. (g), italics added.)

Defendant argues that the trial court violated his right to equal protection by failing to apply the October 2011 version of section 4019 to him. He contends that even though his crimes occurred prior to the October 1, 2011 prospective date upon which conduct credit was increased by the Legislature, he was entitled to have the two-for-two conduct credit scheme applied to him.

Both the federal and state Constitutions guarantee the right to equal protection of the laws. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7.) ““The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.”” [Citation.]” (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) Since the amendments to section 4019 do not involve a ““‘suspect classification’”” or a ““‘fundamental interest,’””” courts apply the rational basis test to determine whether the “distinction drawn by the challenged statute bears some rational relationship to a conceivable legitimate state purpose.” (*In re Stinnette* (1979) 94 Cal.App.3d 800, 805.)

Defendant maintains that he is similarly situated to a defendant whose crime was committed *after* October 1, 2011. In *Brown*, the California Supreme Court rejected a similar argument with respect to a previous version of section 4019. It found that prospective only application of the new version of the statute did not violate equal protection because the purpose of the statute was to create an incentive for good behavior, which could not be done retroactively. (*Brown, supra*, 54 Cal.4th at pp. 328-330.) “[T]he 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.” (*Brown*, at pp. 328-329, italics added; see also *People v. Lara* (2012) 54 Cal.4th 896, 906, fn. 9.)

In his reply brief, defendant attempts to distinguish *Brown* on the ground that it authorized the calculation of conduct credit at different rates where the defendant’s custody period overlapped the operative date of a new statute. He misinterprets *Brown*. The controversy in *Brown* arose from the fact that the January 2010 version of section 4019 did not expressly state how it was to be applied. The California Supreme Court held that it applied prospectively to *custody time served after its operative date*. That necessarily meant that a defendant who served custody time that overlapped that operative date would have conduct credit calculated under two different formulas. The same is not true here because the October 2011 version of section 4019 expressly stated that its provisions applied only to those defendants who *committed their crimes before its operative date*. This distinction does nothing to reduce the import of *Brown*’s conclusion that there is no equal protection violation in prospective application of a new conduct credit calculation scheme. Defendant would have had no additional incentive to maintain good behavior after October 1, 2011 because the new law was expressly inapplicable to him due to the dates of his crimes. Consequently, he was not similarly situated to those whose crimes occurred after October 1, 2011 and is not entitled to additional conduct credit.

B. Abstract

Defendant contends, and the Attorney General concedes, that the trial court needs to make two corrections to the abstract of judgment.

The abstract states that defendant was convicted of count 10 in case 481, but he actually was convicted of count 11 in case 481. We will direct the trial court to correct this mistake by amending the abstract.

The abstract records that the trial court ordered defendant to pay a \$10 fine in each case and to pay \$28 in case 481 and \$30 in case 514 for penalty assessments. However, the court did not specify the statutory bases for these penalty assessments. Trial courts are required to identify the statutory bases for all fees, fines, and penalties imposed. (*People v. Eddards* (2008) 162 Cal.App.4th 712, 718.) We will direct the trial court to amend the abstract to do so.

III. Disposition

The judgment is reversed and remanded to the trial court for the sole purpose of permitting the trial court to amend the abstract of judgment replacing “A10” with “A11” and specifying the statutory bases for the penalty assessments that defendant was ordered to pay. The trial court shall forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

Mihara, J.

WE CONCUR:

Premo, Acting P. J.

Márquez, J.