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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

MOSES S. JOSEPH,

Defendant and Appellant.

H037961

(Santa Clara County
Super. Ct. No. CC592810)

A. Factual and Procedural Background

Defendant Moses S. Joseph was convicted of multiple counts of grand theft and securities fraud among other crimes. He was sentenced on November 7, 2008. This is his second appeal.¹ In *Joseph I*, this court rejected defendant's argument that he was entitled to additional custody credits pursuant to the January 2010 amendment to former Penal Code section 4019² (Stats. 2009, 3d Ex. Sess., 2009-2010, ch. 28, § 50), which increased the credits a defendant could earn by good conduct in custody prior to sentencing.³ We concluded that the amendment did not apply retroactively and that prospective application did not violate principles of equal protection. We did agree that

¹ We have taken judicial notice of the record in the prior appeal (*People v. Joseph* (Jan. 28, 2011, H033740) [nonpub. opn.] (*Joseph I*)).

² Further undesignated section references are to the Penal Code.

³ Section 4019 was further amended (Stats. 2010, ch. 426, § 2, Stats. 2011, ch. 15, § 482, Stats. 2011, ch. 39, § 53, and Stats. 2011, 1st Ex. Sess., 2011-2012, ch. 12, § 35).

defendant's sentence violated section 654. Accordingly, our disposition stated: "The judgment is modified to stay the concurrent terms imposed for counts 19-21. As so modified, the judgment is affirmed." (*Joseph I*, at p. 37.)

On May 23, 2011, the superior court ordered the clerk of that court to modify the judgment, whereupon the clerk prepared a new abstract of judgment to reflect the modification this court had made. Defendant then filed a motion to correct his presentence conduct credits. Defendant argued that credits should have been calculated pursuant to the law in effect at the time the court ordered the judgment to be modified. The superior court denied the motion. This appeal is from that order.

B. Discussion

Defendant reasserts the arguments he made in *Joseph I*, arguing that the credit-enhancing amendments to section 4019 should be applied retroactively and that failure to do so violates his right to equal protection. He also argues that he is entitled to the benefit of the amendment in effect at the time he was "resentenced" since the older statute no longer existed.

As to the first two arguments, defendant acknowledges that *People v. Brown* (2012) 54 Cal.4th 314, 318, held that the January 2010 amendment to section 4019, did not apply retroactively and that its prospective application is not a violation of equal protection. Defendant further acknowledges that *Brown's* rationale applies to his retroactivity and equal protection arguments and we are bound to adhere to it. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) He raises the issues in order to preserve them for review in the federal system. In light of *Brown*, we again reject these two claims.

As to defendant's resentencing argument, we reject it, as well. Defendant frames the argument as follows: "[W]hen a judgment is modified pursuant to an appeal, does the court issuing the modified judgment have a duty to apply the current pre-sentence conduct credit law, if that law is more beneficial to the defendant than the law at the time

of the original sentencing?” As the People correctly point out, the argument is based upon a false premise, namely, that defendant was resentenced by the superior court. He was not. *This court* modified the judgment. Preparation of a new abstract of judgment was a purely ministerial act that was bound to conform to the order of this court. The superior court had no jurisdiction to reconsider defendant’s presentence credits or any other aspect of the judgment.

The abstract of judgment “is a contemporaneous, statutorily sanctioned, officially prepared clerical *record* of the conviction and sentence. It may serve as the order committing the defendant to prison (§ 1213), and is ‘ “the process and authority for carrying the judgment and sentence into effect.” [Citations.]’ (*In re Black* (1967) 66 Cal.2d 881, 890.)” (*People v. Delgado* (2008) 43 Cal.4th 1059, 1070.) It is the role of the clerk of the superior court to ensure that the abstract of judgment accurately reflects the judgment rendered by the court. (§ 1213.)

On review, this court may, as pertinent here, “reverse, affirm, or modify a judgment . . . and may, if proper, remand the cause to the trial court for such further proceedings as may be just under the circumstances.” (§ 1260.) The order of the appellate court is contained in the remittitur. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.) Issuance of the remittitur returns jurisdiction to the superior court, but that jurisdiction is limited to carrying out the orders issued by the appellate court. (*People v. Dutra* (2006) 145 Cal.App.4th 1359, 1365-1366 (*Dutra*.) “The trial court is empowered to act only in accordance with the direction of the reviewing court.” (*Hampton v. Superior Court* (1952) 38 Cal.2d 652, 655.) The rule requiring a trial court to follow the terms of the remittitur is jurisdictional. (*Dutra, supra*, at p. 1367.)

In *Joseph I*, we did not reverse and we did not remand for further proceedings. We modified the judgment and affirmed as modified. It was the duty of the clerk of the superior court to give effect to that disposition by preparing a revised abstract of

judgment reflecting the modification that this court made. The trial court had no jurisdiction to do anything else. It follows that defendant's argument must be rejected.

C. Disposition

The order of the trial court denying defendant's motion to recalculate his presentence credits is affirmed.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.