S200612

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

| PEOPLE OF THE STATE OF CALIFORNIA,<br><br>Plaintiff and Respondent,<br>v.<br><br>JANE NUCKLES,<br><br>Defendant and Appellant. | S__________<br><br>Court of Appeal<br>No. F061562 |
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SUPREME COURT
FILED

MAR - 6 2012

Frederick K. Ohlrich Clerk

Deputy

**PETITION FOR REVIEW**

**Fifth Appellate District No. F061562**
**Kings County Superior Court No. 09CM3022**
**Honorable Donna Tarter, Judge**

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By appointment of the
Court of Appeal under the
Central California Appellate
Program assisted case system

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| **PEOPLE OF THE STATE OF CALIFORNIA,**<br><br>Plaintiff and Respondent,<br>v.<br><br>**JANE NUCKLES,**<br><br>Defendant and Appellant. | S________<br><br>Court of Appeal<br>No. F061562 |

**PETITION FOR REVIEW**

TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to California Rules of Court, rule 8.500(a), defendant and appellant Jane Nuckles petitions this Court for review following the decision of the Court of Appeal, Fifth Appellate District, filed on February 1, 2012. A copy of the Court of Appeal's decision is attached as Exhibit A. This petition presents the following important questions of statewide significance for the Court's resolution:

## QUESTION PRESENTED

Can a defendant be guilty of violating Penal Code section 32 -- which prohibits harboring, concealing, or aiding a principal in a felony, with the intent that the principal may avoid arrest, trial, conviction, or punishment for the felony -- where the principal has already been convicted and served his prison sentence, and the defendant merely helps him avoid arrest for a subsequent, unrelated parole violation, which is not a felony offense?

## NECESSITY FOR REVIEW

The facts of this case are undisputed herein. Ms. Nuckles allowed the father of her grandchild, Adam Gray, to stay in her home, knowing that the police were searching for him because he had left the county to which he had been paroled, in violation of the terms of his parole. As set forth below, Penal Code[1] section 32 is directed at defendants who help a felon escape punishment for the felony offense itself. The Legislature did not intend for the statute to be used to prosecute a defendant who, after a felon has already been arrested, prosecuted, imprisoned, and released, helps that person avoid arrest for a mere parole violation, which is not even a criminal offense prosecutable in court. The penalty for violating section 32 -- up to three years in state prison -- is reserved for those who help the perpetrator attempt to get away with a serious, felonious crime.[2]

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Notably, there is no comparable statute for being an accessory to a misdemeanor (nor a mere parole violation).

This case presents a pure question of law, which this Court can readily resolve. The issue is solely one of statutory interpretation. The Court of Appeal erroneously held that section 32 permits conviction of a defendant who helped a parolee avoid arrest and punishment for a parole violation because parole is, in the Court of Appeal's view, continuing punishment for the original underlying felony, despite that the defendant had no involvement in that felony, nor did she provide any assistance to the felon in getting away with the felony offense. (Exhibit A, pp. 10-11.) This interpretation creates absurd results, which the Legislature could not have intended. The purpose of section 32 is to punish defendants who help a felon escape the penalties for his serious, dangerous, felonious conduct. Mr. Gray, however, had already served his time. Ms. Nuckles took no part in the offense for which he was sent to prison, nor any cover up.

The Court of Appeal's holding creates the illogical and unintended effect that a defendant who helps someone avoid arrest for a mere parole violation can be sent to prison for three years, but a

defendant who helps someone avoid arrest for committing a misdemeanor offense, one day after the person's parole has expired, receives no punishment at all under section 32. This cannot have been the Legislature's intent.

Neither the parties nor the Court of Appeal located any published case addressing this issue. It appears to be a matter of first impression in California. In a footnote, the Court of Appeal essentially invites the Legislature to clarify the statute, or to enact a new one that specifically targets Ms. Nuckles's conduct. (Exhibit A, p. 12, fn. 2.) After holding that section 32 applies to Ms. Nuckles, the Court of Appeal essentially nonetheless asserts that the statute is ambiguous, or even does not apply to the facts of this case. The appellate court's statement highlights the need for this Court's intervention to address the proper interpretation of the statute.

Despite that this case was one of apparent first impression for the Court of Appeal, the court chose not to publish it. Ms. Nuckles respectfully requests that this Court look beyond that factor and grant review, to provide guidance to the lower courts in interpreting

section 32. Ms. Nuckles was needlessly deprived of her liberty and is serving a state prison sentence for actions that fell far short of the culpability deserving of the felony penalties prescribed in section 32. By granting review, the Court can ameliorate this injustice for Ms. Nuckles and all future, similarly situated defendants, who are mistakenly charged under section 32 for conduct that merely assists an offender who has committed only a minor violation. Review of these rulings is therefore necessary in order to secure uniformity of decision and settle important questions of law, within the meaning of California Rules of Court, rule 8.500(b)(1).

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## STATEMENT OF THE CASE

Ms. Nuckles was charged by information with one count of being an accessory to a felony (Pen. Code, § 32; count 1). (CT 6.) The information further alleged that she had previously suffered one prior prison term (§ 667.5, subd. (b)). (CT 6-7.)

A jury trial commenced on November 8, 2010 and concluded on November 9, 2010. (CT 75-80.) Ms. Nuckles was found guilty of the sole count. (CT 80; 6 RT 993.) She admitted the prior prison term. (CT 80; 6 RT 991.)

On December 21, 2010, the trial court denied probation and sentenced Ms. Nuckles to an aggregate term of four years in state prison, consisting of the upper term of three years for count 1 and a consecutive one year for the prior prison term. (CT 137-138; 9 RT 1404.)

Ms. Nuckles filed a timely notice of appeal on December 21, 2010. (CT 141.) The Court of Appeal affirmed, in an opinion issued on February 1, 2012. (Exhibit A.) Ms. Nuckles did not seek rehearing.

## STATEMENT OF FACTS

The question presented is purely one of statutory interpretation, and the facts are undisputed for purposes of this Court's review. The following recitation of the evidence is therefore brief.

### A. Prosecution Evidence

On October 2, 2007, Adam Gray was convicted and sentenced to state prison for a violation of a section 136.1, subdivision (a)(1). (5 RT 634.) Mr. Gray is the father of Ms. Nuckles's grandchild. (5 RT 641.) On July 9, 2008, he was paroled to Kern County. (5 RT 634.) The terms of his parole included that he was not allowed to be in Kings County without the permission of his parole agent. (5 RT 635.)

On September 3, 2009, Mr. Gray was arrested at the home of Ms. Nuckles and her boyfriend John Amaral, in Kings County. (5 RT 640; 6 RT 910.) The parties stipulated that, at the time of his arrest, Mr. Gray was "wanted for a parole violation for absconding from his parole in Kern County." (6 RT 910-911.) As punishment

for the parole violation, Mr. Gray was sent back to prison for six months, eligible to be served at half-time. (5 RT 637-638.)

Ms. Nuckles's boyfriend, Mr. Amaral, was the primary prosecution witness. Mr. Amaral testified that Ms. Nuckles allowed Mr. Gray and his girlfriend Brea Hayes to stay at the house Amaral and Nuckles shared, knowing that the police were looking for Gray because of his parole violation. (5 RT 648, 654-658, 661, 671, 678-679.) Ms. Nuckles also informed Mr. Gray and Ms. Hayes of a trap door to the basement, in the bedroom closet, where they could hide if the police came looking for them. (5 RT 665-666.)

Mr. Amaral informed the police of Mr. Gray's whereabouts. (5 RT 650, 671-672, 679-680.) When the police went to Ms. Nuckles's house, they found Mr. Gray hiding in the back of the garage and Ms. Hayes coming out of the crawl space beneath the closet. (6 RT 906-908, 910.)

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## B. Defense Evidence

Ms. Nuckles testified in her defense. She stated that, in the Summer of 2009, she was not getting along with her boyfriend, Mr. Amaral. (6 RT 912-913.) A few months before, while Ms. Nuckles was incarcerated, Mr. Amaral had taken her car and sold it, forging her name on the title. (6 RT 913.) When she was released from prison, having no car and nowhere to go, she went to live at Mr. Amaral's home. (6 RT 912-913.)

Mr. Gray has a child with Ms. Nuckles's daughter. (6 RT 914.) When Mr. Gray got out of prison, he wanted to see the baby, but Ms. Nuckles's daughter had moved with her to Florida. (6 RT 914.) In late August, Mr. Gray came to see Ms. Nuckles to find out how he could contact her daughter. (6 RT 914.) He came by the home to visit two or three times in August. (6 RT 914-915, 920.)

Mr. Gray and Ms. Hayes never stayed overnight during any of their visits, nor did Ms. Nuckles give them permission to do so. (6 RT 914, 920, 923.) Ms. Nuckles did allow Mr. Gray to store some

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duffel bags in her garage, which she picked up from their mutual friend's house. (6 RT 918-920.)

Ms. Nuckles never allowed Mr. Gray and Ms. Hayes to hide from the police in her home, and she never showed them a trap door in the bedroom closet. (6 RT 923, 937.) She was not even aware the door was there. (6 RT 923.) Mr. Amaral was the only one who knew about the crawl space. (6 RT 937.)

Ms. Nuckles believed that Mr. Amaral lied in his testimony that she harbored Mr. Gray because he feared punishment for unlawfully selling Ms. Nuckles's car. (6 RT 929.) The reason why Mr. Gray and Ms. Hayes were at her home when the police came to investigate is that Mr. Amaral called the police, knowing that Mr. Gray had come to pick up his belongings. (6 RT 935-936, 945.)

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## BRIEF IN SUPPORT OF REVIEW

### I.

### THE COURT OF APPEAL'S DECISION CONTRADICTED THE PLAIN MEANING AND INTENDED EFFECT OF THE STATUTE; SECTION 32 DOES NOT PERMIT CONVICTION OF A DEFENDANT WHO MERELY HELPS A PERSON ESCAPE PUNISHMENT FOR A PAROLE VIOLATION.

#### A. Standard of Review

A criminal conviction violates a defendant's Fourteenth Amendment right to due process of law, and must be reversed, if the evidence was insufficient to "convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." (*Jackson v. Virginia* (1979) 443 U.S. 307, 316, quotation omitted; U.S. Const., 14th Amend.) Reviewing a claim of insufficiency of the evidence to support the conviction, the appellate court applies the substantial evidence standard, which asks "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*Jackson, supra,* 443 U.S. at p. 319, emphasis in original; *People v. Johnson* (1980) 26 Cal.3d 557, 576.)

The issue of whether a defendant can be found guilty of section 32 for helping a person avoid punishment for a parole violation is a pure question of law reviewed *de novo*. (See *People v. Harrison* (1989) 48 Cal.3d 321, 335 [application of statute to conceded facts is question of law reviewed independently].)

**B. The Court of Appeal Misinterpreted Section 32, Which Was Intended to Punish a Defendant Who Helps Another Person Escape Punishment for a Felony Offense. A Parole Violation Is Not Even a Criminal Offense that Can Be Prosecuted in Court, Let Alone a Felony Offense.**

Section 32 provides: "Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony." "In order to convict a person under this section, there must be proof that a principal committed a particular felony, the accused knew the principal committed a felony, the accused did something to help the principal get away *with the crime*, and the accused acted with the

intent to help the principal get away *with the crime*." (*In re Malcolm M.* (2007) 147 Cal.App.4th 157, 165, emphasis added.)

In the instant case, the prosecution accused Ms. Nuckles of helping Mr. Gray escape from arrest or punishment for "absconding from his parole." (6 RT 910-911.) Violating the terms of one's parole, however, is not a felony offense.

Not only is a parole violation not a felony, it is not even a criminal offense that can be prosecuted in court. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 480 ["[R]evocation of parole is not part of a criminal prosecution . . . ."].) It is a violation of the terms of supervised released, which is adjudicated administratively. The Board of Parole Hearings is the entity vested with the power to suspend or revoke parole. (§ 3060.) "At the revocation hearing the hearing panel shall decide whether there is good cause to believe a condition of parole has been violated and, if so, the most appropriate disposition." (Cal. Code Regs., tit. 15, § 2645, subd. (a).)

Where the Board finds the parolee in violation, it has several options at its disposal, including but not limited to: continuing the

parolee on parole, sending the parolee to treatment in a local program, or, "when the violation is so serious that reincarceration is necessary," confining the parolee for a period not to exceed 12 months. (§ 3057; Cal. Code Regs., tit. 15, § 2646, subd. (c).)

As the above authorities demonstrate, a parole violation is not a felony, or even a criminal offense. The prosecution accused Ms. Nuckles of helping Mr. Gray escape punishment for a parole violation: namely, leaving the county of his parole without permission. (6 RT 910-911.) Section 32 only criminalizes helping a principal to a felony escape punishment for his or her felony offense.

Ms. Nuckles took no part in the original, 2007 felony for which Mr. Gray was arrested, tried, convicted, and sentenced to prison. She merely helped him avoid punishment for a violation of the terms of his parole, conduct which is not proscribed by section 32. Simply stated, as a matter of law, no rational trier of fact could have found Ms. Nuckles guilty of the charged offense. (*Jackson*, *supra*, 443 U.S. at p. 319.) Thus, her conviction under section 32 must be reversed for insufficient evidence.

### C. The Court of Appeal Erred in Its Holding that, for Purposes of Section 32, Parole is Punishment, and Thus Any Help Rendered to a Parolee to Avoid Arrest for Any Parole Violation Constitutes Being an Accessory to a Felony. Such an Interpretation Creates Illogical Results that the Legislature Did Not Intend.

The Court of Appeal's opinion relies on decisions, in other contexts, suggesting that parole is continued punishment for the underlying felony. Thus, any help rendered to a parolee to assist him or her in avoiding arrest for a parole violation constitutes helping the parolee avoid punishment for the felony. (Exhibit A, pp. 10-12.) While the court is correct that parole is considered punishment for some purposes, extending that interpretation into the context of section 32 contravenes the intent of the Legislature.

Section 32 was not intended to criminalize providing assistance to a convicted felon who has already been arrested, tried, and convicted, and who has completed his or her prison term for that felony. First, the statute must be read as prohibiting helping a felon escape punishment *for the felony itself.* Section 32 provides that, "after a felony has been committed," a defendant is guilty of being an accessory if he or she helps the principal to "escape from arrest,

trial, conviction or punishment, having knowledge that said principal has committed such felony . . . ." It does not explicitly indicate the requisite cause of the punishment. In other words, section 32 does not expressly proscribe helping the principal "escape from arrest, trial, conviction or punishment [*for the felony.*]"

Case law makes clear, however, what common sense dictates: section 32 only criminalizes helping someone escape punishment for the felony itself. "A conviction under section 32 requires proof that a principal committed a specified felony, the defendant knew that the principal had committed a felony, the defendant did something to help the principal get away *with the crime,* and that as a result of this action the defendant intended to help the principal get away *with the crime.*" (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 536, emphasis added; accord *Malcolm M., supra,* 147 Cal.App.4th at p. 165 ["[T]here must be proof that a principal committed a particular felony, the accused knew the principal committed a felony, the accused did something to help the principal get away with the crime, and the accused acted with the intent to help the principal get

away with the crime."]; *People v. Duty* (1969) 269 Cal.App.2d 97, 104 ["A person may be charged under section 32 when he aids the principal in concealing the latter's crime."].)

Thus, it is not simply that any time a principal commits a felony, and the defendant subsequently helps the principal to avoid punishment for some new violation, the defendant is guilty of being an accessory by virtue of providing aid to a felon. For purposes of section 32, then, only if helping someone avoid arrest for a parole violation is considered helping him or her avoid punishment for the original felony for which he or she has already completed a prison sentence, was Ms. Nuckles guilty as an accessory. The Court of Appeal relied on two propositions to answer this question in the affirmative. First, parole is a "penal" consequence of a guilty plea, such that a defendant must be advised of it as part of the direct consequences of the plea, in order for the plea to be knowing and intelligent. (*People v. Moore* (1998) 69 Cal.App.4th 626, 630-632; Exhibit A, p. 10.) Second, while on parole, a parolee "continues in

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the custody of the [D]epartment [of Corrections]. (Pen. Code, § 3000.)" (*In re Lusero* (1992) 4 Cal.App.4th 572, 576.)

Neither of these lines of authority pertains to section 32, and the Court of Appeal's extension of those holdings to the instant context creates illogical and unintended results. While parole is a penal consequence of a felony conviction and the parolee is in the constructive custody of the Department of Corrections, section 32 is aimed at defendants who help another person get away with serious, felonious conduct. Section 32 is directed at the conduct for which the defendant actually helped the felon escape punishment. The truth of that proposition is evinced by the fact that section 32 does not apply to defendants who act as accessories to misdemeanor offenses.

Ms. Nuckles did not contribute in any way to Mr. Gray's felonious conduct. She did not shelter him while he was wanted for committing a felony. She helped him escape punishment for an administrative violation: far less culpable conduct, for which the Legislature has not seen fit to impose the serious penalties available

for a section 32 violation. Moreover, Ms. Nuckles did not help Mr. Gray avoid punishment by helping him avoid being placed on parole. Mr. Gray remained on parole despite Ms. Nuckles allowing him to hide in her home to escape punishment for an administrative violation.

In addition, the Court of Appeal's interpretation creates illogical results. First, under the court's reading of section 32, if Ms. Nuckles helped Mr. Gray with respect to any conduct of his that constituted a technical violation of his parole, she would be guilty of a felony under section 32. But if Mr. Gray committed a misdemeanor one day after his parole expired, and Ms. Nuckles then sheltered him from the police, she would not be punishable under section 32 at all. This is illogical because it is not that Mr. Gray's status as a previously-convicted felon makes Ms. Nuckles's assistance to him punishable under section 32. Section 32 proscribes helping someone to get away with his felony. Ms. Nuckles only helped him escape punishment for a parole violation.

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Second, an additional result unintended by the Legislature, based on the Court of Appeal's holding, is that any kind of assistance to Mr. Gray in violating the terms of his parole would be punishable under section 32. For instance, if Mr. Gray's parole required him to drug test (see *Samson v. California* (2006) 547 U.S. 843, 851-852), and Ms. Nuckles provided him with clean urine, she would be guilty of violating section 32 because she helped Mr. Gray avoid arrest for his drug use while on parole, since parole is considered by the Court of Appeal to be "punishment" for purposes of section 32. Certainly, this minor behavior does not rise to the level of the culpability intended by the Legislature to constitute a felony offense under section 32.

This Court is respectfully requested to grant review in order to provide instruction to lower courts in interpreting section 32, in order to avoid appellate decisions like that in the case at bar, which erroneously transformed minor conduct into a felony offense, in contravention of the intent of the Legislature. Ms. Nuckles, all

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future similarly situated defendants, and California courts would greatly benefit from this Court's guidance.

## CONCLUSION

Wherefore, appellant respectfully requests that this petition be granted.

Dated: March 2, 2012

Respectfully submitted,

DAVID L. ANNICCHIARICO
Counsel for Appellant

## CERTIFICATE OF WORD COUNT

Counsel for appellant hereby certifies that this brief consists of **3,592** words (excluding tables, proof of service, and this certificate), according to the word count of the computer word-processing program. (Cal. Rules of Court, rule 8.360(b)(1).)

Dated: March 2, 2012

DAVID L. ANNICCHIARICO

# EXHIBIT A

COURT OF APPEAL
FIFTH APPELLATE DISTRICT
FILED

FEB 01 2012

By ________
Deputy

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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| THE PEOPLE,<br>Plaintiff and Respondent,<br>v.<br>JANE NUCKLES,<br>Defendant and Appellant. | F061562<br>(Kings Super. Ct. No. 09CM3022)<br>**OPINION** |

APPEAL from a judgment of the Superior Court of Kings County. Donna L. Tarter, Judge.

David L. Annicchiarico, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Melissa Lipon, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

## INTRODUCTION

Appellant/defendant Jane Nuckles, a parolee, was very fond of Adam Gray, who was also on parole. Defendant allowed Gray and his girlfriend to stay at her house in Kings County, even though she knew that he had absconded from his parole in Kern County. Defendant instructed Gray and his girlfriend that they could hide in the crawl space of her house if the police showed up to look for them. Nuckles's then-boyfriend, who also lived at the house, was afraid of Gray and informed law enforcement officers that Gray was staying at their house. Gray was arrested while he was hiding in the garage, and his girlfriend was found in the trap door leading to the crawl space.

Defendant was charged with one count of being an accessory to a felony (Pen. Code,[1] § 32), that she harbored, concealed, and aided Gray with the intent that he avoid and escape from arrest and punishment. After a jury trial, defendant was convicted as charged and the court found she had served a prior prison term (§ 667.5, subdivision (b)). Defendant was sentenced to an aggregate term of four years in state prison.

On appeal, defendant claims her conviction for being an accessory to a felony is not supported by substantial evidence, because Gray did not commit another felony while he was staying with her, and he was only wanted for absconding from parole. We will address the trial court's calculation of conduct credits and will affirm.

## FACTS

### Adam Gray's record

In October 2007, Adam Gray was convicted in the Superior Court of Kings County of violating section 136.1, subdivision (a)(1), dissuading a witness from testifying. He was sentenced to two years in state prison.

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[1] All further statutory citations are to the Penal Code unless otherwise indicated.

On July 9, 2008, Gray was released from prison and paroled to Kern County. As a condition of his parole, he was ordered to remain in Kern County, and he could not go to Kings County without the permission of his parole officer.

On July 21, 2009, Gray's parole officer determined he had absconded from his parole in Kern County. Gray's parole was suspended, an arrest warrant was issued, and he became a parolee at large.

**Defendant and her boyfriend**

In the summer of 2009, defendant and her boyfriend, John Amaral, lived in a one-bedroom rental house in Hanford, Kings County. Amaral was employed as a maintenance technician. Defendant had served time in prison and was on parole.

Amaral testified that defendant had a close relationship with Gray, and defendant thought highly of Gray. Gray had dated defendant's daughter. He was the father of defendant's grandchild, and defendant considered him as her son-in-law. Amaral met Gray for the first time about a year and a half earlier, when he joined defendant and her daughter as they visited Gray at the Kings County Jail.

**Gray arrives at defendant's house**

Amaral testified that in early August 2009, defendant called Gray's sister because she heard Gray was out of prison, and she wanted to contact him. Gray arrived at their house in Hanford about a week later and confronted Amaral about his alleged failure to stand up for defendant during a dispute with another person about a tattoo.

On or about August 3, 2009, defendant invited Gray and his girlfriend, Brea Hays, to move into the rental house that she shared with Amaral. Amaral did not invite them, and he was not pleased they were there because he was afraid of Gray. Gray had threatened Amaral for his alleged failure to back up defendant during the tattoo dispute. Defendant told Amaral that Gray used to burglarize houses and he had a weapons charge against him.

Amaral testified things were "kind of scary" for him after Gray moved in, and Amaral's relationship with defendant deteriorated. Gray and Hays slept on blankets on the living room floor, while Amaral and defendant slept in the only bedroom in the house.

**Defendant reads about Gray in Crime Stoppers**

On or about Monday, August 31, 2009, defendant asked Amaral to get the previous edition of the local newspaper which included the section on Kings County's "Most Wanted Crime Stoppers," because she thought Gray's photograph was included in that section. Amaral went to the store and found a recent edition of the Hanford Sentinel which contained the Crime Stoppers section. Gray's name and photograph were in Crime Stoppers, and he was identified as a wanted person.

Amaral returned home and gave the paper to defendant, Gray, and Hays. Amaral testified that "[t]hey were happy about it, it seemed like [Gray] made the most wanted crime stoppers for Kings County." Amaral testified "they were real happy and just it seemed like the paper was like getting a trophy."

Amaral testified he was scared when he saw Gray listed in the Crime Stoppers section, and it bothered him that defendant, Gray, and Hays were celebrating about it. Amaral never heard defendant tell Gray that he had to leave the house or turn himself in to the authorities.

Amaral testified that he later talked to defendant about Gray's picture in Crime Stoppers. Amaral was concerned because defendant was on parole, and Gray's presence might amount to a parole violation and she could go back to prison. Defendant told Amaral not to worry about it. Defendant also said that she would "do anything for [Gray], that she would take a bullet for him." Defendant told Amaral that their house had to be a safe place for Gray to stay, and that Amaral could not tell anyone that Gray was there.

**The hiding place in the bedroom**

Amaral testified that on the night of August 31, 2009, after they had seen the newspaper, Amaral was in his bedroom by himself. He heard defendant, Gray, and Hays talking in the living room about what to do if the police arrived at the house. Defendant told

Gray and Hays they should hide in the basement and told them about a trap door in the bedroom closet that was covered with carpet. Defendant told Gray and Hays that they could remove the carpet and lift up the trap door, and they could use the crawl space to enter the basement and hide.

**Amaral calls Crime Stoppers**

Amaral testified that Gray and Hays continued to live at the house. On September 3, 2009, Amaral went home for lunch, and defendant criticized him and said he did not make enough money. Amaral was upset, and he did not want to be at the house with them anymore. When Amaral returned to work, he called the Crime Stoppers telephone number on the newspaper and reported that Gray was at his house.

**The arrest of Gray**

It was stipulated at trial that on September 3, 2009, Gray was wanted for a parole violation for absconding from his parole in Kern County.

On the afternoon of September 3, 2009, deputies from the Kings County Sheriff's Department arrived at the house to look for Gray, who was wanted on the outstanding arrest warrant. They announced their presence at the front door, but no one responded. They walked around the property and found Gray hiding in the garage. Gray did not resist and he was taken into custody. The deputies entered the house and found Hays climbing out of the trap door from the crawl space in the bedroom closet. Defendant was not at the house when Gray was arrested.

The officers found several large duffel bags in the garage which contained clothes, stereo equipment, pry bar equipment, bolt cutters, and papers belonging to Gray and Hays. They also found a Lugar handgun, ammunition, a gun cleaning kit, and a pepper spray can in the garage. Amaral advised the officers that these items did not belong to defendant or himself.

**After Gray's arrest**

On September 16, 2009, defendant met with her parole officer, admitted that she had seen Gray's photograph in Crime Stoppers, and she knew Gray was a parolee at large. Defendant claimed Gray had been storing some of his things in her garage, and Gray had only been at her house for three hours when he was arrested. Defendant also claimed that she told Gray to turn himself in to the authorities.

Gray was subsequently found to have violated parole, and he was returned to state prison.

**Defendant's trial testimony**

Defendant testified at trial and disputed every aspect of Amaral's testimony. She denied that she was very close to Gray, or that she allowed Gray and Hays to stay at her house. Gray only visited her at the house about three times toward the end of August 2009. Defendant claimed Gray was helping Amaral and his son install a stereo system in their car. Defendant further claimed that Amaral gave Gray a key to the garage.

Defendant testified a friend called her and told her that Gray's photograph was in the Crime Stoppers section of the newspaper. Defendant claimed she went to the store, bought the paper, and called Gray. She asked Gray what he had done, and Gray said he just did not check in with his parole officer. Defendant testified she told Gray to collect his things from the garage and turn himself in to the proper authorities.

Defendant testified she never gave Gray and Hays permission to live at her house, never told him how to hide in the crawl space, and never showed them the trap door in the closet. She said she did not know how Hays knew about the trap door. Defendant claimed Amaral was angry at her because of a dispute over her car.

## DISCUSSION

**I. Defendant's conviction is supported by substantial evidence**

Defendant was convicted of violating section 32, which states:

> "Every person who, *after a felony has been committed*, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony." (Italics added.)

Defendant cites to the italicized language of the statute, *ante*, and argues that she did not harbor or conceal someone who had committed a felony. Defendant concedes that she knew Gray had absconded from parole, but she argues that a parole violation does not amount to a felony offense, that she only could have violated section 32 if Gray committed another felony after he absconded, and there is insufficient evidence to support her conviction for violating section 32.

When a criminal conviction is challenged as lacking evidentiary support, "the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We must presume in support of the judgment the existence of every fact the jury could reasonably deduce from the evidence. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.) The same standard applies when the conviction rests primarily on circumstantial evidence. (*Ibid.*) We do not reweigh the evidence or resolve conflicts in the evidence. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

We note that while defendant contends her conviction is not supported by substantial evidence, she seems to be raising a question of law as to whether the prosecution's evidence in this case constitutes a violation of section 32. In any event, we turn to the nature of a section 32 violation.

A. <u>Section 32</u>

Section 32 defines the crime of being an accessory after the fact. (*People v. Plengsangtip* (2007) 148 Cal.App.4th 825, 835; *People v. Moomey* (2011) 194 Cal.App.4th 850, 856.) "The crime of accessory consists of the following elements: (1) someone other than the accused, that is, a principal, must have committed a specific, completed felony; (2) the accused must have harbored, concealed, or aided the principal; (3) with knowledge that the principal committed the felony or has been charged or convicted of the felony; and (4) with the intent that the principal avoid or escape from arrest, trial, conviction, or punishment. [Citations.]" (*People v. Plengsangtip, supra*, 148 Cal.App.4th at p. 836.)

To prove the defendant was an accessory after the fact, the prosecution was required to show that she rendered aid to Gray, the perpetrator, with the required knowledge and intent. (*People v. Elliott* (1993) 14 Cal.App.4th 1633, 1641.) " 'The gist of the offense described by section 32 ... is that the accused [render] *[a]ny kind of overt or affirmative assistance to a known felon* .... The test of an accessory after the fact is that he renders his principal *some personal help* to elude punishment -- the kind of help being unimportant. [Citation.]' (Italics added, internal quotation marks omitted." (*Id.* at pp. 1641-1642, fn. omitted.) A person may be liable as an accessory to a felony "based on a continuous course of conduct as opposed to a single, identifiable and agreed-upon act." (*Id.* at p. 1642, fn. 9.)

A violation of section 32 can be committed only when the principal commits a felony rather than a misdemeanor. (*People v. Moomey, supra*, 194 Cal.App.4th at p. 856, fn. 4.) " 'Knowledge that the principal committed a felony or has been charged with the commission of one is an essential element of accessory liability.' [Citation.] In determining whether the alleged accessory had such knowledge, 'the jury may consider such factors as his [or her] possible presence at the crime *or other means of knowledge of its commission*, as well as his [or her] companionship and relationship with the principal before and after the offense.' [Citations.]" (*Id.* at p. 858, italics added.)

"An accessory … must lend assistance to the principal after the commission of the offense with the intent of helping him escape capture, trial or punishment. [Citations.]" (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 536.) Any overt or affirmative assistance to a known felon may fall within the terms of the statute. (*People v. Duty* (1969) 269 Cal.App.2d 97, 104.)

**B. *Instructions and argument***

The jury in this case was instructed with CALCRIM No. 440, which correctly defined the elements of the offense:

> "To prove that defendant is guilty of this crime, the People must prove that: [¶] One, another person, who I call the perpetrator[,] committed a felony. [¶] Two, the defendant knew that the perpetrator had committed a felony or that the perpetrator had been charged with or convicted of a felony. [¶] Three, after the felony had been committed, the defendant either harbored, concealed or aided the perpetrator. [¶] And four, when the defendant acted she intended that the perpetrator avoid or escape arrest, trial, conviction or punishment…."

In closing argument, the prosecutor reviewed the elements listed in CALCRIM No. 440, and argued that as to the first element, Gray committed a felony based on the stipulation that he had been convicted of a felony, sent to prison, and paroled to Kern County. The prosecutor cited to an exhibit which had been admitted, which consisted of Gray's certified prison record which confirmed his felony conviction and two-year prison sentence. As to the second element, the prosecutor argued defendant knew Gray had been convicted of a felony based on her statements to Amaral about Gray's status, and her admitted review of the Crime Stoppers section in the newspaper. As for the third and fourth elements, defendant harbored and concealed Gray by allowing him to stay at her house even though she knew about his status, and she did so with the intent for Gray to avoid punishment so he would not be arrested on the parole violation.

In his closing argument, defense counsel asserted that Amaral's trial testimony was not truthful because he owed defendant money for her car. Defense counsel argued defendant did

not harbor or aid a fugitive, but instead told Gray to turn himself in when she learned that he was wanted.

### C. Analysis

Defendant contends section 32 does not address the situation where a person harbors and conceals the whereabouts of an absconding parolee who has violated the terms and condition of parole, while knowing that parolee is wanted and subject to arrest, but where the parolee has not committed a new felony after being released on parole. More specifically, the question in this case is whether the fact that a parolee has been released from a period of actual confinement obviates the criminal consequences for a person who harbors the parolee—where the parolee's misconduct pertains solely to a violation of parole conditions unrelated to any underlying felonious conduct. We answer that question in the affirmative.

We first note that the mandatory parole period is considered to be a "penal consequence" of a guilty plea:

> " 'In all guilty plea and submission cases the defendant shall be advised of the direct consequences of conviction.' [Citation.] 'This judicially mandated rule of criminal procedure encompasses only primary and direct consequences of a defendant's impending conviction as contrasted with secondary, indirect or collateral consequences.' [Citation.] The advice requirement generally extends only to *'penal' consequences* [citations], which are 'involved in the criminal case itself' [citation]. [¶] A consequence is deemed to be 'direct' it if has ' " 'a definite, immediate and largely automatic effect on the range of the defendant's punishment.' " ' [Citation.] Such direct consequences include: the permissible range of punishment provided by statute [citation]; imposition of a restitution fine and restitution to the victim [citation]; probation ineligibility [citation]; *the maximum parole period following completion of the prison term* [citation]; registration requirements [citation]; and revocation or suspension of the driving privilege [citation]." (*People v. Moore* (1998) 69 Cal.App.4th 626, 630, italics added.)

"During the period of parole following incarceration, an inmate continues in the custody of the department. (Pen. Code, § 3000.)" (*In re Lusero* (1992) 4 Cal.App.4th 572, 576.) A parolee in California "remains in the legal custody of the California Department of

Corrections through the remainder of his term, [citation], and must comply with all of the terms and conditions of parole, including mandatory drug tests, restrictions on association with felons or gang members, and mandatory meetings with parole officers ... [citations]. [Citation.] General conditions of parole also require a parolee to report to his assigned parole officer immediately upon release, inform the parole officer within 72 hours of any change in employment status, request permission to travel a distance of more than 50 miles from the parolee's home, and refrain from criminal conduct and possession of firearms, specified weapons, or knives unrelated to employment. [Citation.]" (*Samson v. California* (2006) 547 U.S. 843, 851-852.)

"A parolee remains under the legal custody of the Department and is subject at any time to be taken back to prison, and the Legislature has vested the Board with 'full power to suspend or revoke any parole, and to order returned to prison any prisoner upon parole.' (Pen. Code, §[§] 3060, 3056.)" (*Terhune v. Superior Court* (1998) 65 Cal.App.4th 864, 874.)

As applied to this case, Adam Gray was convicted of a felony violation of section 136.1, subdivision (a)(1), dissuading a witness, and sentenced to state prison. He was released on parole under the legal custody of the California Department of Corrections and Rehabilitation. As a parolee, he was subject to specific terms and conditions of parole. He violated those terms and conditions when he left Kern County and went to Kings County without the permission of his parole officer. As a result, a warrant was issued for his arrest.

Defendant knew Gray had been convicted of a felony, sentenced to state prison, and released on parole. She also knew he had absconded from parole, he was a wanted fugitive, and an arrest warrant had been issued when she read the Crime Stoppers section of the newspaper. Amaral was concerned that Gray's continued presence at their house might violate the terms and conditions of defendant's own parole. Defendant dismissed Amaral's concerns, and said that Gray needed a safe place to stay and warned Amaral not to tell anyone that Gray was at the house. After reading Crime Stoppers, defendant advised Gray and his girlfriend that they should open the trap door in the bedroom closet and hide in the crawl space if the police

arrived at the house to look for him and presumably serve the outstanding arrest warrant. Based on this evidence, defendant violated section 32 by harboring a fugitive because she harbored Gray with the intent that he "avoid or escape from arrest" on the outstanding warrant *having* knowledge that Gray had been convicted of a felony. (§ 32.)[2]

## II. Conduct credits

Based on this court's standing order of February 11, 2010, we now turn to the superior court's calculation of defendant's presentence conduct credits. We will review the factual background and determine whether the superior court used the proper method to make that calculation.

### A. Presentence conduct credit

Under section 2900.5, a person sentenced to state prison for criminal conduct is entitled to credit against the term of imprisonment for all days spent in custody before sentencing. (§ 2900.5, subd. (a).) In addition, section 4019 provides that a criminal defendant may earn additional presentence credit against his or her sentence for willingness to perform assigned labor (§ 4019, subd. (b)) and compliance with rules and regulations (§ 4019, subd. (c)). These forms of section 4019 presentence credit are called, collectively, conduct credit. (*People v. Dieck* (2009) 46 Cal.4th 934, 939, fn. 3; *People v. Duff* (2010) 50 Cal.4th 787, 793.)

Prior to January 25, 2010, section 4019 provided for "two days [of conduct credit] for every four days the defendant is in actual presentence custody. [Citations.]" (*People v. Duff, supra*, 50 Cal.4th at p. 793.)

Effective January 25, 2010, section 4019 was amended to provide that any person who is not required to register as a sex offender and is not being committed to prison for, and has

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[2] While the criminal sanction of section 32 is applicable to defendant for reasons expressed in this opinion, the Legislature might consider a concise statute to specifically address such misconduct, i.e., the act of purposely harboring and concealing the whereabouts of a parolee who is known to have violated parole and is subject to arrest, even if that parolee has not committed a separate felony offense.

not suffered a prior conviction of, a serious felony as defined in section 1192.7, or a violent felony as defined in section 667.5, subdivision (c), may accrue two days of conduct credit for every two days of presentence custody. (Stats. 2009-2010, 3d Ex.Sess., ch. 28X, § 50.)

Effective September 28, 2010, the Legislature again amended section 4019, returning to the earning rate in effect prior to January 25, 2010, and deleting the sections excluding sex registrants and defendants with a prior, serious felony conviction from enhanced credit-earning eligibility. The September 28, 2010, amendments to section 4019 apply only "to prisoners who are confined to a county jail ... for a crime committed on or after the effective date of that act." (Stats. 2010, ch. 426, § 2; amended section 4019, subd. (g).)[3] Defendant was charged and convicted in this case of violating section 32 on or about September 3, 2009. Thus, the September 28, 2010, amendment to section 4019 does not apply in this case.

However, section 2933 was also amended effective September 28, 2010 (Stats. 2010, ch. 426, § 1), to state: "*Notwithstanding Section 4019* ... a prisoner sentenced to the state prison ... for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits ... are applicable to the prisoner." (§ 2933, subd. (e)(1), italics added.)[4]

With this background in mind, we turn to the court's calculation of defendant's conduct credits in this case to determine if the trial court used the correct method to calculate credits. We also determine whether defendant was entitled to presentence credits even though she was serving some of that time for a parole violation.

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[3] Section 4019 has again been amended on April 4, 2011, but operation of that amendment is conditioned on the creation and funding of a community corrections program. (Stats. 2011-2012, ch. 15, §§ 482, 636.)

[4] Section 2933 has again been amended, effective Sept. 21, 2011, and operative Oct. 1, 2011, but these amendments are not applicable to this case. (Stats. 2011-2012, 1st Ex.Sess., ch. 12X, § 16.)

**B. Defendant's prior conviction and parole status**

In 2005, defendant was convicted of felony possession of a controlled substance, which is not a violent or serious felony (Health & Saf. Code, § 11377, subd. (a)), and she was placed on probation pursuant to Proposition 36. She violated probation numerous times, and was sentenced to 16 months in state prison in 2008. In December 2008, she was released on parole. At trial, there was admissible evidence that defendant was still on parole at the time she was harboring Adam Gray.

On September 3, 2009, Gray was arrested at defendant's house, but defendant was not home at the time. At trial, defendant's parole officer testified that she spoke with defendant on September 16, 2009, and defendant claimed Gray only visited her house, and that she asked Gray to turn himself in. There is no evidence that defendant committed any other acts to violate her parole aside from harboring Gray.

According to the probation report, defendant was taken into custody at the Kings County Jail on September 16, 2009.

The probation report also states that on September 21, 2009, defendant was returned to custody for violating parole in her prior drug possession case. Defendant was held in the Kings County Jail and the California Department of Corrections on "detainer" from September 21, 2009, to January 30, 2010. The probation report further states that defendant was paroled on January 30, 2010.

Defendant was held in the Kings County Jail from January 31, 2010, to February 18, 2010. Thereafter, defendant was out of custody pending her trial in this case.

**C. The charges in this case**

On December 23, 2009, the information was filed in this case, which charged defendant with violating section 32 on or about September 3, 2009. On November 9, 2010, defendant was convicted as charged.

**D. The sentencing hearing**

On December 21, 2010, the court conducted the sentencing hearing for her conviction of violating section 32. The probation report stated that defendant had 156 days of actual credit, based on being held in custody from September 16, 2009, to February 18, 2010. The court was advised that defendant was returned to custody on December 13, 2010, and her updated actual credits were 165 days. The probation report calculated defendant's custody credits using a two-tiered system, based on the amendment to section 4019 which occurred on January 25, 2010. The court awarded 165 days of actual credit and 96 days of conduct credit, for a total of 261 days.

**E. The superior court's corrective order**

On March 23, 2011, defendant's trial counsel sent a letter to the superior court and requested correction of her conduct credit. Counsel complained that the trial court had calculated conduct credit based on a two-tiered system: (1) for actual days before January 25, 2010, the court awarded two days of credit for every four days spent in custody; and (2) for actual days on and after January 25, 2010, the court awarded two days of credit for every two days spent in custody.

Defense counsel advised the court that *People v. Zarate* (2011) 192 Cal.App.4th 939 (*Zarate*) rejected the use of a two-tiered system to calculate a defendant's presentence conduct credits.[5] Defense counsel further argued that defendant's conduct credits should have been calculated based on the amended version of section 2933, effective September 28, 2010, which provided for "one for one" conduct credits. Defense counsel asserted that defendant was entitled to 165 actual days, plus 165 days of conduct credit, for a total of 330 days. Counsel requested the court to correct the sentencing order in the case.

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[5] On May 18, 2011, the California Supreme Court granted review in *Zarate*. (*People v. Zarate* (2011) 124 Cal.Rptr.3d 828.)

On April 11, 2011, the superior court issued an order to correct the calculation of defendant's conduct credit. The court stated that it had erroneously used a two-tiered formula to calculate conduct credits, and that defendant was entitled to 165 days of actual credit and 165 days of conduct credit, for a total of 330 days.

**F. Custody based on defendant's parole violation**

The first question posed by this case is whether defendant properly received presentence conduct credits after she was arrested for violating section 32, even though the record reflects that she served time for violating parole in her prior drug-possession case for part of that custodial period.

"[A] prisoner is not entitled to credit for presentence confinement unless he [or she] shows that the conduct which led to his conviction was the sole reason for his loss of liberty during the presentence period. Thus ... his [or her] criminal sentence may not be credited with jail or prison time attributable to a parole or probation revocation that was based *only in part* upon the same criminal episode. [Citations.]" (*People v. Bruner* (1995) 9 Cal.4th 1178, 1191, original italics (*Bruner*).) This rule of "strict causation" stems from the conclusion that section 2900.5 did not intend to allow credit for a period of presentence restraint unless the *conduct* leading to the sentence was the *true and only unavoidable basis* for the earlier custody." (*Id.* at p. 1192, italics in original.)

Thus, "where a period of presentence custody stems from multiple, unrelated incidents of misconduct, such custody may not be credited against a subsequent formal term of incarceration if the prisoner has not shown that the conduct which underlies the term to be credited was also a 'but for' cause of the earlier restraint. Accordingly, when one seeks credit upon a criminal sentence for presentence time already served and credited on a parole or probation revocation term, he [or she] cannot prevail simply by demonstrating that the misconduct which led to his conviction and sentence was 'a' basis for the revocation matter as well." (*Bruner, supra*, 9 Cal.4th at pp. 1193-1194.)

The entirety of the record in this case establishes that defendant was in custody from September 21, 2009, to January 30, 2010, for violating parole from her prior conviction for possession of a controlled substance. She was again paroled on January 30, 2010. As explained by *Bruner*, a defendant's criminal sentence may not be credited with jail or prison time attributable to a parole or probation revocation "that was based *only in part* upon the same criminal episode. [Citations.]" (*Bruner, supra*, 9 Cal.4th at p. 1191, italics in original.)

In this case, however, the record indicates that the sole basis for the revocation of defendant's parole was because she was arrested for harboring Adam Gray. There is no evidence that defendant violated parole on any other basis. Thus, the court correctly included defendant's custodial period for the parole violation when it calculated her presentence conduct credits in this case.

G. **Defendant's presentence credits**

The next question is whether the court properly amended its original sentencing order and calculated defendant's presentence credits based on a "one for one" formula, pursuant to the September 28, 2010, amendment to section 2933.

As explained *ante*, the question of whether the January 25, 2010, amendment to section 4019 is retroactive is currently pending before the California Supreme Court. However, we need not address the issues raised in *Zarate* because the January 25, 2010, amendment to section 4019 is not applicable to this case or to this defendant for the following reasons.

Defendant was sentenced on December 21, 2010. Section 2933 was amended effective September 28, 2010 (Stats. 2010, ch. 426, § 1), to provide as follows: "*Notwithstanding Section 4019* ... a prisoner sentenced to the state prison ... for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits ... are applicable to the prisoner." (§ 2933, subd. (e)(1), italics added.) Section 2933 also provides that a person shall not receive such credit "if it appears by the record that [he or she] has refused to satisfactorily perform labor ... or has not satisfactorily complied with the reasonable rules and

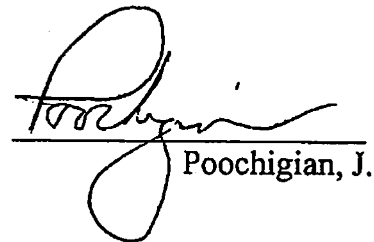
regulations." (§ 2933, subd. (e)(2).) Lastly, section 2933, subdivision (e)(3) provides, "[s]ection 4019, and not this subdivision, shall apply" to persons required to comply with sex offender registration requirements, those committed for a serious felony (§ 1192.7, subd. (c)), and those with a prior conviction for a serious or violent felony (§ 667.5, subd. (c)). (§ 2933, subd. (e)(3).)

The record contains no indication defendant failed to perform assigned labor or follow rules, or that any of the section 2933, subdivision (e)(3) disqualifying factors apply. Therefore, since defendant was sentenced in December 2010, the superior court correctly amended its original order in this case to award defendant 165 days of actual credit and 165 days of conduct credit pursuant to the September 28, 2010, amendment to section 2933, for a total of 320 days. (§ 2933, subd. (e)(1). See Stats. 2010, ch. 426, § 1.)

Finally, we note that there have been conflicting opinions from this state's appellate courts as to the retroactivity of the January 25, 2010, amendment to section 4019, and the extent to which it was intended to influence good behavior. However, the September 10, 2010, amendment to section 2933 does not trigger the same concerns given its express language that it applies "[n]otwithstanding section 4019."

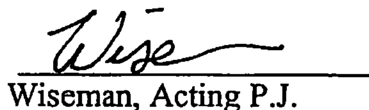
## DISPOSITION

The judgment is affirmed.

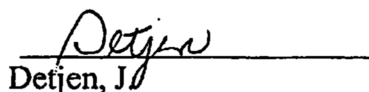


Poochigian, J.

WE CONCUR:



Wiseman, Acting P.J.



Detjen, J.

## PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 584 Castro Street, #654, San Francisco, California, 94114. On the date shown below, I served the within ***PETITION FOR REVIEW*** to the following parties hereinafter named by:

_X_ Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California, addressed as follows:

Court of Appeal
Fifth Appellate District
Clerk of the Court
2424 Ventura Street
Fresno, California 93721

Kings County Superior Court
1426 South Drive
Hanford, CA 93230

Attorney General's Office
2550 Mariposa Mall,
Room 5090
Fresno, CA 93721

Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95816-4736

Jane Nuckles, CDC No. X32876
Valley State Prison for Women
Bldg/Bed: D4 -7-3L
P.O. Box 92
Chowchilla, CA 93610

I declare under penalty of perjury the foregoing is true and correct. Executed this _5th_ day of March, 2012, at San Francisco, California.

David L. Annicchiarico