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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO RODRIGUEZ
MAGALLANES,

Defendant and Appellant.

2d Crim. No. B238084
(Super. Ct. No. 2011024729)
(Ventura County)

Antonio Rodriguez Magallanes appeals from an order denying his post-judgment motion for extra presentence conduct credits following his September 6, 2011 conviction by plea to carrying a loaded firearm. (Pen. Code, § 12031, subd. (a)(2)(F).)¹ Pursuant to a negotiated plea, the trial court suspended imposition of sentence, granted probation with 300 days county jail, and awarded 86 actual days and 43 days conduct credit. (§§ 2900.5; 4019.) Appellant claims that he is entitled to 86 days conduct credit based on a 2011 amendment of section 4019 (AB 109) providing that certain defendants may earn one-for-one conduct credits for crimes committed after October 1, 2011. (Stats 2011, ch. 15, § 482 (AB 109), operative October 1, 2011.) We affirm.

¹ All statutory references are to the Penal Code.

Former Section 4019 Conduct Credit

At the October 4, 2011 sentencing hearing, the trial court awarded 42 conduct credits based on former section 4019 which provided that appellant was entitled to conduct credits at the rate of two days for every four days of actual time served in presentence custody. (Stats. 2010, ch. 426, § 2; see *People v. Brown* (2012) 54 Cal.4th 314, 318 & fn. 3.)

Prospective Application of AB 109

Effective October 1, 2011, section 4019 was amended to provide one-for-one presentence conduct credits for crimes committed on or after October 1, 2011. (Stats 2011, ch. 15, § 482 (AB 109).) Section 4019, subdivision (h) states in pertinent part: "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 county jail . . . for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." (Fn. omitted.)

Appellant argues, under equal protection principles, that he is entitled to an additional 44 days conduct credit (enhanced one-for-one conduct credits) even though he committed the offense on July 10, 2011, more than two months before the operative date of AB 109. A similar argument was rejected by our Supreme Court with respect to a superseded version of section 4019 providing for one-for-one presentence conduct credits from January 25, 2010 to September 20, 2011. (Stats 2009-2010, 3d Ex.Sess., ch. 28, § 50; *People v. Brown* (2012) 54 Cal.4th 314, 328-330; *People v. Lara* (2012) 54 Cal.4th 896, 906, fn. 9.) The court held that the equal protection clauses of the federal and state Constitutions (U.S. Const., 14th Amend; Cal. Const., art. 1, § 7, subd. (a)) did not require that the superseded version of section 4019 for enhanced conduct credits be applied retroactively.

The same principle applies to AB 109 which is prospective in application. (See *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1553.) Appellant committed the crime on July 10, 2011, well before AB 109's operative date (October 1, 2011). " '[T]he 14th Amendment does not forbid statutes and statutory changes to have a beginning, and thus

to discriminate between the rights of an earlier and later time.' [Citation.]" (*People v. Floyd* (2003) 31 Cal.4th 179, 191.) Under the doctrine of stare decisis, *People v. Brown, supra*, and *People v. Lara, supra*, control and are dispositive. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Nancy Ayers, Judge
Superior Court County of Ventura

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