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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JESUS BATRES, Defendant and Appellant.	B238558 (Los Angeles County Super. Ct. No. MA053779)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles A. Chung, Judge. Affirmed.

Ann Krausz under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Kim Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

This appeal is limited to a single issue: the amount of presentence custody credit to which defendant is entitled. The amount of such credit is governed by Penal Code section 4019, which has undergone a series of amendments to the recent criminal realignment law. It is not necessary to trace all of the permutations of this statute. It is sufficient for our purposes to observe that, prior to legislation enacted in 2008, the statute provided that, for most defendants, a defendant in local custody could earn two days of conduct credit for every four days actually served (in effect, a one for two ratio). In that year the statute was amended to provide two days of conduct credit for every two days served (in effect, a one for one ratio). That amendment was in force from January 25, 2010 to September 28, 2010. (Stats. 2009-2010, 3d Ex. Sess. 2009-2010, ch. 28, § 50.) In 2010 the statute was changed once again to the previous ratio of one for two. (Stats. 2010, ch. 426, § 2.) It was altered yet again, to provide the two for two ratio, but only for persons whose offense was committed on or after October 1, 2011. That amendment specifically provided that the more generous amount of earnable conduct credit was limited to persons whose commitment offense occurred on or after October 1, 2011. For others, conduct credit "shall be calculated at the rate required by the prior law. (Pen. Code, § 4019, subd. (h).) That is, at the one for two rate. (Stats. 2011, ch. 15, § 482.) Defendant was sentenced to state prison in 2011, for a crime committed in August of that year. Accordingly, he was not eligible to receive the more generous provisions of the conduct credit law.

Despite the statutory provision that the restoration of one for one credit for good conduct only applies to persons whose crime was "committed on or after October 1, 2011", defendant argues that, notwithstanding the fact that his commitment offense occurred long before October 1, 2011, he is entitled to be credited with the rate in effect immediately preceding the 2011 amendment to the statute. He bases his argument on the Court of Appeal decision in *People v. Olague* (2012) 205 Cal.App.4th 1126, review granted Aug. 8, 2013, S203298, review dismissed March 20, 2013. Consequently, the case is no longer citable authority. In that decision, the court considered and rejected an argument that failure to apply the more generous rate would violate state and federal

principles of equal protection. But the court did find an ambiguity in the statute, which, it reasoned, is best resolved by giving effect to [both provisions cited as giving rise to the ambiguity] and concluding that the liberalized scheme applies both to prisoners confined for crimes committed after October 1, 2011, and to prisoners confined after that date for earlier crimes.

The Attorney General characterizes defendant's argument as resting on equal protection principles. Since the case upon which defendant relies rejected that argument, it does not appear that defendant is making that claim, but is, instead, relying on the claim of ambiguity. In any event, the equal protection argument was fully set to rest by the Supreme Court's recent decision in *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*), which also relied on the statutory rule that statutes apply prospectively only, unless the enacting law expressly provides otherwise or there is a '"'"clear and unavoidable implication [to] negative[] the presumption"'" of prospective application. (*Id.*, at p. 319, citing *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208.) The statute at issue in *Brown* did not expressly declare that it was applicable only to persons whose crimes or local custody was before a specified date. In our case the Legislature did so declare: the statute does not apply to anyone whose crime was committed before October 1, 2011. Since defendant's crime was not committed on or after that date, the statute does not apply to him. (*People v. Rajanaygam* (2012) 211 Cal.App.4th 42, 48–52.)

DISPOSITION

The judgment is affirmed.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.