Filed 9/6/12 P. v. Root CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GWENN DANIELLE ROOT,

Defendant and Appellant.

2d Crim. No. B237777
(Super. Ct. No. 2011014501)
(Ventura County)

A defendant is not entitled to a retroactive application of an amendment to Penal Code section 4019 granting one-for-one presentence custody credits.[1] (*People v. Brown* (2012) 54 Cal.4th 314.) We affirm.

FACT

On May 5, 2011, Gwenn Danielle Root pled guilty to possession of a controlled substance. (Health & Saf. Code, § 11350, subd. (a).) The trial court placed her on formal probation pursuant to Proposition 36. (§ 1210.1.)

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

On November 29, 2011, Root admitted violating the terms of probation. The trial court revoked her Proposition 36 probation and continued her on formal probation. As a condition of probation, the trial court ordered Root to serve 90 days in jail. The court gave her credit for 50 days of actual custody and 24 days of conduct credit, for a total of 74 days. The court rejected Root's argument that she should receive one-for-one conduct credits.

DISCUSSION

Root contends the federal and California equal protection clauses require a retroactive application of the October 1, 2011, amendment to section 4019.

Root does not contest that the version of section 4019 under which she was sentenced provided for two days of conduct credit for every four days of actual presentence custody. She further concedes that one amendment to section 4019 granting day-for-day conduct credits is by its terms not applicable to offenses committed prior to October 1, 2011. (§ 4019, subd. (h).) Her offense was committed prior to that date.

Root relies on the equal protection clauses of the federal and state Constitutions. (U.S. Const., 14th Amend; Cal. Const., art. I, § 7, subd. (a).) But a prerequisite to a meritorious equal protection claim is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. (*People v. Brown*, *supra*, 54 Cal.4th at p. 328.) Our Supreme Court in *Brown* rejected the argument that prisoners serving time before and after a conduct credit statutory amendment takes effect are similarly situated. (*Id.* at p. 330.) Thus, equal protection does not compel a retroactive application of the amendment to section 4019. We are bound by *Auto Equity Sales v. Superior Court* (1962) 57 Cal.2d 450.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Bruce A. Young, Judge

Superior Court County of Ventura

Stephen P. Lipson, Public Defender, Michael C. McMahon, Chief Deputy and Paul Drevensted, Deputy Public Defender for Defendant and Appellant.

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