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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAIME JUAN RUIZ,

Defendant and Appellant.

B242585

(Los Angeles County
Super. Ct. No. KA087014)

APPEAL from an order of the Superior Court of Los Angeles County, Wade Olson, Judge. Affirmed.

California Appellate Project, Jonathan B. Steiner and Cheryl Lutz, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Jaime Juan Ruiz appeals from the trial court's post-judgment order denying his request for additional pre-sentence custody credit. We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

In a non-published opinion filed April 19, 2010 (*People v. Ruiz*, B218649), this court affirmed the judgment entered following Ruiz's June 15, 2009 plea of no contest to petty theft with a prior (Pen. Code, § 666)¹ and his admission that he previously had been convicted of a theft-related offense for purposes of the Three Strikes law (§ 667, subds. (b)-(i), § 1170.12, subds. (a)-(d)).² The trial court sentenced Ruiz to four years in prison, then awarded him presentence custody credit for 20 days actually served and 10 days of good time/work time.

In a petition filed in the superior court on June 19, 2012, Ruiz indicated that he had spent 20 days in custody prior to his "conviction and/or sentencing." He asserted that, pursuant to section 4019, as amended April 4, 2011 and operative October 1, 2011, he is entitled to an additional 10 days of good time/work time, or a total of 40 days of pre-sentence custody credit. He requested that the trial court send to the records department of the California Men's Colony State Prison a corrected abstract of judgment and minute order "directing the Department of Corrections an[d] Rehabilitation to credit [him with] 40 days of pre-sentence custody credit."

At proceedings held on June 19, 2012, the trial court indicated that it had read and considered Ruiz's "petition for [an] order granting pre-sentence custody and conduct credits pursuant to . . . sections 2900.5 [and] 4019." The trial court then denied the petition, indicating that Ruiz had been "given the proper [number of] custody credits."

On June 29, 2012, Ruiz filed a timely notice of appeal from the trial court's order.

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

² In order to determine the date of Ruiz's conviction, the sentence imposed and the number of days of pre-sentence custody credit awarded, on December 12, 2012 this court took judicial notice of the record in Ruiz's first appeal, Court of Appeal case No. B218649. (Evid. Code, §§ 459, 452, subd. (d).)

CONTENTIONS

After examination of the record, appellate counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

On November 28, 2012, the clerk of this court sent to Ruiz at the California Men's Colony State Prison, P.O. Box 8101, San Luis Obispo, California 93409-8101, a notice advising him that he could, within the next 30 days, submit any contentions, grounds of appeal or arguments he wished this court to consider. His appellate counsel, however, did not send to Ruiz a copy of the record on appeal or the brief filed as, according to the Department of Corrections, Ruiz had been discharged on November 10, 2012. Apparently, neither they, nor the California Appellate Project have a current address for Ruiz. Under these circumstances, it is expected that the notice will be returned to the court and Ruiz will not be filing a response.

In any event, the April 4, 2011 amendment to section 4019, subdivision (f), which was enacted after Ruiz was sentenced, reads that "a term of four days will be deemed to have been served for every two days spent in actual custody." However, subdivision (h) of the amended section 4019 provides that "[a]ny days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." The California Supreme Court has expressly found that the amendments to section 4019 operate "prospectively" (*People v. Brown* (2012) 54 Cal.4th 314, 322-323) and that such an interpretation of the statute does not violate principles of equal protection (*Brown*, at p. 330; see also *People v. Verba* (2012) 210 Cal.App.4th 991,997).

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The trial court's order denying Ruiz's request for additional pre-sentence custody credit is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.