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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.

JOSEPH NUNES PAZ,

Defendant and Appellant.

2d Crim. No. B239653  
(Super. Ct. No. 2010040459)  
(Ventura County)

Equal protection does not require a retroactive application of an amendment to Penal Code section 4019 that increases the amount of conduct credits.<sup>1</sup> (*People v. Brown* (2012) 54 Cal.4th 314.)

FACTS

On June 23, 2011, Joseph Nunes Paz pled guilty to felony petty theft (§ 666, subd. (a)), and admitted he suffered three prior prison terms within the meaning of section 667.5, subdivision (b). The court suspended a four-year prison sentence and placed Paz on formal probation for thirty-six months.

Paz's probation was twice revoked and reinstated. On January 17, 2012, the trial court revoked Paz's probation a third time. The trial court imposed the four-year sentence and awarded 450 days of custody credit: 300 days of actual custody and 150

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<sup>1</sup> All statutory references are to the Penal Code.

days of conduct credits. Paz objected that he is entitled to two days of conduct credit for every two days of actual custody.

### DISCUSSION

Paz contends the equal protection clauses of the United States and California Constitutions (U.S. Const., 14th Amend.; Cal. Const., art 1, § 7) require retroactive application of an October 1, 2011 amendment to section 4019. The amendment grants one day of conduct credit for every day in actual custody.

Our Supreme Court in *People v. Brown*, *supra*, 54 Cal.4th 314 rejected the argument that equal protection requires a retroactive application of amendments to section 4019 favorable to the defendant. The Court stated: "[T]he important correctional purposes of a statute authorizing incentives for good behavior (citation) are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows." (*Id.* at pp. 328-329.)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Nancy Ayers, Judge

Superior Court County of Ventura

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