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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.

DONALD ALAN ADAMS,

Defendant and Appellant.

2d Crim. No. B234479
(Super. Ct. No. 2010043034)
(Ventura County)

Donald Alan Adams appeals the judgment entered following his guilty plea to possession of methamphetamine for sale (Health & Saf. Code, § 11378), and his admission that he had suffered a prior strike conviction (Pen. Code,¹ § 667, subds. (c)(1), (e)(1)), and a prior conviction for possessing a controlled substance for sale (Health & Saf. Code, §§ 11370.2, subd. (a), 11378). Appellant also admitted violating his probation in two prior cases in which he was convicted of burglary (§ 459; case no. 2009047354), and possession for sale of a controlled substance (Health & Saf. Code, § 11378; case no. 2009016854). The trial court sentenced him to five years eight months in state prison and struck the prior strike conviction. In the instant matter, appellant was awarded 404 days presentence custody credits, consisting of 270 actual days and 134 good conduct days. The court awarded him a total of 222 days presentence custody credit on each of the

¹ All further undesignated statutory references are to the Penal Code.

probation violation matters, consisting of 148 days actual custody credit and 74 days conduct credit.

Appellant's sole contention on appeal is that he is entitled to additional custody credits in case number 2009016854 under the version of section 4019 that was in effect from January 25, 2010, until September 28, 2010. He argues that the statute applies retroactively because the judgment in case number 2009016854 was not final when the relevant version of section 4019 went into effect. This claim is meritless. As the People correctly note, appellant was not entitled to additional credits under the statute as a matter of law because he has a prior strike conviction. (*People v. Lara* (2012) 54 Cal.4th 896, 906-907.) This is so notwithstanding the fact that the court struck the prior in the interests of justice. "In the case before us, the historical fact that limits [appellant's] presentence conduct credits under former section 4019 is his prior conviction for first degree burglary (§§ 459, 460, subd. (a)) because it is a serious felony (see § 1192.7, subd. (c)(1)(18)). The People pled the prior conviction for the different purpose of triggering various statutory sentence enhancements. Nevertheless, as we have explained, this pleading was sufficient to inform defendant that his presentence conduct credits might be limited. The trial court struck the allegation under section 1385 in order to avoid the enhancements, but 'when a court has struck a prior conviction allegation it has not "wipe[d] out" that conviction as though the defendant had never suffered it; rather, the conviction remains a part of the defendant's personal history' and available for other sentencing purposes. [Citations.]" (*Ibid.*, fn. omitted.) We are bound to follow this authority. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

James P. Cloninger, Judge
Superior Court County of Ventura

Stephen P. Lipson, Public Defender, Paul Drevenstedt, Deputy Public Defender, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Marc A. Kohm, Sonya Roth, Deputy Attorneys General, for Plaintiff and Respondent.