Filed 6/20/12 P. v. Bateman CA2/4

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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. LEE M. BATEMAN, Defendant and Appellant.	B233984 (Los Angeles County Super. Ct. No. BA355047)

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

Jennifer M. Hansen, 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, Chung L. Mar and Victoria B. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Lee M. Bateman appeals from the judgment following his conviction by a jury of possession of cocaine base. (Health & Saf. Code, § 11350.) He contends that he is entitled to an additional 138 days of presentence custody credit under an amendment to Penal Code section 4019[1] that took effect after the imposition of sentence but before the resolution of this appeal. He also requests that we review the transcript of the *Pitchess*[2] hearing to determine whether any discoverable material was improperly withheld. Finding no error, we affirm the judgment.

BACKGROUND

On April 6, 2009, Los Angeles Police Department Officer George Mejia observed defendant conducting an apparent sale of narcotics on the corner of 5th and Main Streets in Los Angeles. Both parties to the transaction were detained, searched, and found to be carrying an off-white solid substance that was later tested and identified as cocaine base.

Defendant was arrested and charged with the sale, transportation, or offer to sell a controlled substance in violation of Health and Safety Code section 11352, subdivision (a) (count 1), and possession for sale of cocaine base in violation of Health and Safety Code section 11351.5 (count 2). As to each count, it was further alleged that defendant had four prior serious felony convictions or juvenile adjudications within the meaning of the "Three Strikes" law (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)) and had served five prior prison terms (§ 667.5).

Following a jury trial, defendant was acquitted of the charged offenses but was convicted of possession of a controlled substance (Health & Saf. Code, § 11350, subd.

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1 Unless otherwise indicated, all further statutory references are to the Penal Code.

2 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

(a)), a lesser included offense of count 2.[3] At a bifurcated hearing, defendant admitted his most recent strike prior, a March 14, 2001 conviction for attempted robbery in case number BA107375. (§§ 664, 211.)

On January 7, 2010, the trial court sentenced defendant to the midterm sentence of two years under section 1170, subdivision (h)(1), which was doubled to four years under the Three Strikes law. (§§ 1170.12, subd. (c)(1), 667, subd. (e)(1).) The trial court awarded 415 days of presentence credit based on 277 days of actual custody and 138 days of conduct credit.

DISCUSSION

I. Presentence Conduct Credit

Under the former version of section 4019 that was in effect on the date of sentencing (Jan. 7, 2010), defendant earned 138 days of presentence conduct credit while serving 277 days of actual custody.[4] He contends that under the current version of section 4019, which became operative on October 1, 2011, he should have earned two days of conduct credit for every two days in local custody, or an additional 138 days of presentence conduct credit. We are not persuaded.

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[3] As defendant does not challenge the sufficiency of the evidence, we need not further discuss the facts that support the jury's findings.

[4] When defendant was sentenced, former subdivisions (b) and (c) of section 4019 provided that "for each six-day period in which a prisoner is confined in or committed to" a local jail facility, one day is deducted from the period of confinement for performing assigned labor and one day is deducted from the period of confinement for satisfactorily complying with the rules and regulations of the facility. (Stats. 1982, ch. 1234, § 7, p. 4553.) Former subdivision (f) provided that "if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody."

Section 4019 was amended three[5] times between the date of sentencing and the resolution of this appeal. Only the third amendment, which enacted the current version of section 4019, is at issue on appeal.

The first amendment to section 4019, which took effect on January 25, 2010, allowed qualifying defendants to earn two days of conduct credit for every two days in local custody (one-for-one conduct credit). Regardless of the January 25, 2010 amendment's retroactivity, defendant was not eligible for the doubled rate of accrual because of his prior serious felony conviction. By its terms, the January 25, 2010 amendment's increased rate of accrual did not apply to those who must register as a sex offender, whose present offense was a serious felony, or who had a prior conviction for a serious or violent felony. (Stats. 2009-2010, 3d Ex. Sess., ch. 28 (S.B. 18), § 50, eff. Jan. 25, 2010.)

The second amendment to section 4019, which took effect on September 28, 2010, eliminated the one-for-one conduct credit provisions of the prior amendment and reinstated the conduct credit provisions that were in effect before the January 25, 2010 amendment. However, the September 28, 2010 amendment applied only to local custody served by defendants for crimes committed on or after September 28, 2010. (Stats. 2010, ch. 426, § 2.)

The current version of section 4019, which became operative on October 1, 2011, reinstated the one-for-one conduct credit provisions, but eliminated the exceptions found in the January 25, 2010 amendment. (Stats. 2010-2011, 1st Ex. Sess., ch. 12 (A.B. 17) §§ 16, 35.) In other words, the increased rate of accrual presently found in section 4019 applies even to those who must register as a sex offender, whose present offense was a serious felony, or who had a prior conviction for a serious or violent felony.

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5 There were actually five amendments to section 4019, but for the sake of convenience, the three 2011 amendments that became operative on the same date (Oct. 1, 2011) will collectively be referred to as the third amendment. When a statute is given both an effective date and an operative date, the effective date is the date on which the statute becomes a law, and the operative date is the date on which the statute may be actually implemented. (*People v. McCaskey* (1985) 170 Cal.App.3d 411, 415-419.)

However, by its express language, the increased rate of accrual presently found in section 4019 does not apply to those, like defendant, whose days were earned before October 1, 2011. The current statute plainly states that "[a]ny days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." (§ 4019, subd. (h).)

Defendant contends that the distinction drawn in the current statute between days earned before and after October 1, 2011, serves no rational purpose and violates the equal protection rights of those whose days were earned before the effective date of the amendment.

Both the federal and state Constitutions guarantee the equal protection of laws to all persons. (U.S. Const., 14th Amend., § 1; Cal. Const., art. I, § 7.) "'The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.'" (*In re Gary W.* (1971) 5 Cal.3d 296, 303, superseded by statute on other grounds as stated in *People v. Superior Court* (*Cheek*) (2001) 94 Cal.App.4th 980, 990.) Where, as here, the statutory distinction at issue involves neither a fundamental interest nor gender, the legislation does not violate equal protection if it bears a rational relationship to a legitimate state purpose. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1200.) Under the rational relationship test, if there is some reasonably conceivable state of facts that could provide a rational basis for the classification, the inquiry is over. (*Id.* at pp. 1200-1201.)

In analyzing defendant's equal protection challenge, we are guided by the underlying principles concerning presentence credit. "Credit is a privilege, not a right. Credit must be earned." (§ 2933, subd. (c).) Conduct credits are not a mitigation of punishment, but a means of encouraging and rewarding behavior. (*People v. Brown* (2004) 33 Cal.4th 382, 405.) "The primary purposes of conduct credits for prison inmates are to encourage conformity to prison regulations, to provide incentives to refrain from criminal, particularly assaultive, conduct, and to encourage participation in 'rehabilitative' activities. [Citations.]" (*People v. Austin* (1981) 30 Cal.3d 155, 163.)

In addition, we note that the recent amendments to section 4019 were enacted at least in part in response to the current fiscal crisis. For example, Senate Bill No. 18, which amended section 4019 to provide for the accrual by qualified defendants of presentence credits at twice the previous rate, states that the legislation was drafted in response to "the fiscal emergency declared by the Governor by proclamation on December 19, 2008." (Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 62.)

Moreover, we are aware that we are not treading new ground. There are many published and unpublished cases concerning the recent amendments to section 4019 that are currently pending before the Supreme Court, including a case in which this division held that the prospective application of the January 25, 2010 amendment to section 4019 did not violate the appellant's right to equal protection. (*People v. Eusebio* (2010) 185 Cal.App.4th 990, review granted Sept. 22, 2010, S184957.)

Turning to an earlier decision, *In re Stinnette* (1979) 94 Cal.App.3d 800 is particularly helpful to our analysis of defendant's equal protection claim. The panel in *Stinnette* was faced with an equal protection challenge to a provision analogous to section 4019, which allowed state prisoners to earn credit on a prospective basis. The court stated that "it is not a denial of equal protection to refuse to apply the credit provision in question retroactively." (*Id.* at p. 805.) It found that the prospective application of the statute promoted the state's "desirable and legitimate purpose of motivating good conduct among prisoners so as to maintain discipline and minimize threats to prison security. Reason dictates that it is impossible to influence behavior after it has occurred." (*Id.* at p. 806.)

We similarly find that the current statute's prospective application promotes legitimate fiscal and public safety interests. As in *Stinnette*, there is a valid public interest in encouraging the future compliance and good behavior of locally detained defendants. It is impossible to exert the same influence over those defendants who had already left local custody before the present statute took effect. In light of the rational basis for the statute's prospective application, we conclude there is no equal protection

violation in the prospective application of the October 1, 2011 amendment to section 4019.

Defendant cites *In re Kapperman* (1974) 11 Cal.3d 542, in which the Supreme Court invalidated on equal protection grounds a provision that made presentence custody credit applicable only to persons delivered to the Department of Corrections after the effective date of the statute. We find that *Kapperman* is distinguishable because it addressed actual custody credits, not conduct credits. Custody credits are awarded automatically on the basis of time served, while conduct credits are earned through compliance and good behavior.

Defendant also cites *People v. Sage* (1980) 26 Cal.3d 498, in which the court reviewed a prior version of section 4019 that denied presentence conduct credit to a "detainee/felon" who was eventually sentenced to prison, but granted presentence credit to a detainee who was convicted of a misdemeanor and to a felon who, having made bail, was released on his own recognizance and therefore served no presentence time. (*Id.* at p. 507.) The court found no rational basis for those distinctions: "Each of the grounds advanced by the People for denying presentence conduct credit to detainee/felons might also be given for denying such credit to detainee/misdemeanants as well. Yet detainee/misdemeanants are clearly entitled to such credit under section 4019. The inescapable conclusion is that the challenged distinction—between detainee/felons and felons who serve no presentence time—was not based on the grounds proposed." (*Id.* at pp. 507-508.)

We find that *Sage* is distinguishable because it involved a limitation on presentence conduct credit based on the defendant's ultimate status as a misdemeanant or felon. In this case, the prospective application of the increased accrual rate bears a rational relationship to the state's interest in influencing the future behavior of local detainees while simultaneously easing the fiscal crisis.

II. *Pitchess* Hearing

Defendant filed a *Pitchess* motion seeking to discover certain personnel information relating to six police officers, which was later limited to Officers Mejia (who conducted the surveillance) and Valencia (the arresting officer). The trial court found good cause to conduct an in camera hearing to examine the officers' personnel records for discoverable complaints of false reporting and fabrication of evidence. After conducting an in camera hearing, the trial court ordered the production of 20 documents that it found dealt with either dishonesty or fabrication of evidence.

We have conducted an independent review of the transcript, which indicates that the court complied with the procedural requirements of a *Pitchess* hearing. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229-1230.) We conclude that all discoverable complaints pertaining to possible incidents of false reporting and fabrication of evidence were produced and find no abuse of discretion. (*Id.* at p. 1228 [abuse of discretion standard applies to a trial court's decision on the discoverability of material in police personnel files].)

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.