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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MARSHA BRANDON, Defendant and Appellant.	B250146 (Los Angeles County Super. Ct. No. YA075812)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotelo, Judge. Remanded with directions and otherwise affirmed as modified.

Dwyer, Kim, Jin H. Kim, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Marsha Brandon was convicted by a jury of one count of stalking (Pen. Code, § 646.9, subd. (b)) (count 1), two counts of stalking with a prior conviction (Pen. Code, § 646.9, subds. (c)(1) & (c)(2)) (counts 7 & 8), and two counts of carrying a dirk or dagger (Pen. Code, § 12020, subd. (a)(4)) (counts 2 & 3).[1] Her appeal challenges the judgment and the sentence imposed by the trial court in four respects, three of which are conceded by respondent to require modification of the sentence.

Background

Because Brandon does not challenge the sufficiency of the evidence to support her conviction by the jury, the following abbreviated outline of the charges' factual basis is sufficient for the purposes of this appeal.

Previous incidents and offenses

Brandon first saw Dr. Willifred Campbell, an obstetrician and gynecologist at a St. Louis, Missouri medical clinic, as a patient in 1984. After her first appointment, Brandon began appearing frequently, sometimes daily, at that clinic and others at which Dr. Campbell worked part time, seeking additional pelvic examinations, which Dr. Campbell refused to provide, finding her behavior and statements to be odd and sometimes bizarre. After Brandon located Dr. Campbell's residence she frequently sought admittance, followed Dr. Campbell when she walked her dog, stated she loved Dr. Campbell, and sought to interfere with Dr. Campbell's relationship with Dr. Campbell's boyfriend (her current husband) Vernon. She made frequent calls to Dr. Campbell's residence, she apparently caused the unlisted number to be changed to another number, and after she became pregnant and was refused prenatal care from Dr. Campbell's clinic, she claimed

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[1] Statutory references are to the Penal Code unless otherwise specified. Section 646.9 prohibits stalking. Subdivision (a) makes guilty one who "willfully, maliciously, and repeatedly follows or . . . harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family . . . ." Subdivision (b) provides for punishment of anyone who violates subdivision (a) when any court order prohibits the conduct described in subdivision (a). Section 422 prohibits threats to commit crimes resulting in death or great bodily injury.

that Dr. Campbell was the father of her child. Dr. Campbell reported her conduct to the St. Louis police.

Dr. Campbell moved to Los Angeles in 1987. In 1988, the telephone company attempted to install a "life-line" telephone in Dr. Campbell's apartment, in Brandon's name. In 1989, after moving to a different apartment, Dr. Campbell began receiving numerous telephone calls and messages from Brandon—as many as 100 in one day, from the St. Louis area code—containing statements ranging from professions of love to lewd suggestions and threats of violent harm to Dr. Campbell and Vernon. In summer 1990, a security guard saw someone sitting in a car for two days outside Dr. Campbell's apartment building, and someone was able to enter the building and bang on Dr. Campbell's door. Between 1992 and 1995, Brandon left many lewd, vulgar, and threatening voicemail messages for Dr. Campbell at the medical office where she worked in Redondo Beach, and left messages for Dr. Campbell with other office employees. In October 1995, Brandon appeared at Dr. Campbell's office dressed as a painter with a tool belt. After identifying Brandon as the person who had been making anonymous calls to the office, and who had been bothering Dr. Campbell, the office personnel called 911. At her 1996 criminal trial resulting from that incident, Brandon told Dr. Campbell that no matter where Dr. Campbell went, she would be there. The court issued a 10-year criminal protective order against Brandon.

In 1999, Dr. Campbell appeared in court in response to a petition by Brandon for an injunction preventing harassment by Dr. Campbell. Brandon's threats and violent conduct in the courtroom required a number of bailiffs to subdue her, and the court issued a restraining order and a new criminal protective order, valid until May 28, 2002, because Brandon had violated the 1996 order.

In June 2000, Dr. Campbell's office received a number of calls (and a visit) from Brandon accusing her of being a serial killer, having killed and harmed Brandon's family members, and threatening that the devil (and Brandon) would come to destroy Dr. Campbell (and to collect on Dr. Campbell as a bounty hunter). That conduct resulted in a February 19, 2002 restraining order against Brandon valid for 10 years.

The 2009 offenses

On July 24, 2009, Dr. Campbell's office received what the female caller said was a personal call for Dr. Campbell, declining to leave a message when she was told Dr. Campbell was with a patient. Five minutes later the caller called again, this time becoming angry and abusive when asked to leave a message. Dr. Campbell overheard the call on the speakerphone and recognized Brandon's voice. Dr. Campbell's office received five more calls from Brandon that day.

On August 10, 2009, Brandon came to Dr. Campbell's office, yelling, and bypassed the first-floor receptionist to reach the second floor. As Brandon was escorted from the building by a security guard she was heard saying that no one would stop her from seeing Dr. Campbell, that she would return, and that she wanted to kill Dr. Campbell. When police took Brandon into custody, they found a dagger in her pocket, and another wrapped with cord to her leg.

Brandon's counsel suggested in her defense that the evidence was weak that the security guard had heard her threaten to kill Dr. Campbell, and that she carried the daggers not to use as weapons, but as openers because she was homeless.

Proceedings before trial

After Brandon was held to answer on felony charges of stalking and carrying a dirk or dagger, and misdemeanor charges of using a telephone to annoy and willful disobedience of court orders, on April 15, 2011, the court declared a doubt as to her mental competence to stand trial, and suspended the proceedings pending a mental evaluation. (§§ 1368, 1368.1, 1369.) On May 1, 2011, the court found Brandon competent to stand trial. (§ 1370, subd. (a)(1)(A).)

On August 17, 2011, upon defense counsel's declaration of doubt, the court found on the basis of further evidence that Brandon was not then mentally competent to stand trial (§ 1368), recommending her confinement in Patton State Hospital, with authority to administer involuntary antipsychotic medication, for a maximum of three years. On June 20, 2012, after hearing the report from Patton State Hospital, the court found Brandon competent to stand trial.

On November 7, 2012, a second amended information charged Brandon for her conduct between July 24, 2009 and August 10, 2009, with one count of stalking (§ 646.9, subd. (b)) (count 1), two counts of stalking with a prior conviction (§ 646.9, subds. (c)(1) & (c)(2)) (counts 7 & 8), and two counts of carrying a dirk or dagger (§ 12020, subd. (a)(4)) (counts 2 & 3). The information alleged that Brandon had suffered a prior serious or violent felony conviction under the "Three Strikes" law (§§ 667, subds. (b)-(i) & 1170, subds. (a)-(d)), and had served two prior prison terms (§ 667.5, subd. (b)). Brandon denied the amended information's special allegations.

Conviction and sentencing

Brandon was found guilty by a jury of one count of stalking (§ 646.9, subd. (b)), two counts of carrying a dirk and dagger (§ 12020, subd. (a)(4)), and two counts of stalking with prior convictions (one with a prior conviction for criminal threats, the other for a prior conviction for stalking). (§ 646.9, subds. (c)(1) & (c)(2).) A court trial resulted in a finding that the prior conviction allegations were true.

The court sentenced Brandon on count 7 (stalking with a prior conviction, § 646.9, subd. (c)(2)), designated as the principal determinate term) to the upper term of five years, doubled to 10 years under the Three Strikes law (§ 1170, subds. (a)-(d)). She was sentenced on count 2 (carrying a dirk or dagger, § 12020, subd. (a)(4)) to a consecutive sentence of the midterm of eight months, doubled to 16 months. Sentences for the charges in counts 1, 3, and 8 were stayed pursuant to section 654.[2] She received an additional two years on the prior prison term allegations. The aggregate prison sentence was 13 years and four months. The court imposed various fines and fees, giving Brandon 1,527 days of custody credit.

Brandon filed a timely appeal.

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[2] Section 654 prohibits multiple punishment for a single act or omission, where multiple criminal statutes are violated with a single intent as a means of accomplishing a single objective. (*People v. Chaffer* (2003) 111 Cal.App.4th 1037, 1044.)

Discussion

Brandon makes four contentions on appeal: (1) that her count 1 and count 8 convictions must be vacated because they arise from only one stalking offense; (2) that the finding of two prior prison terms must be vacated and the abstract must be corrected, because more than five years had passed after her last prison term and before her current offenses; (3) that her custody days were undercounted; and (4) that by virtue of the equal protection clauses of the state and federal constitutions she is entitled to additional credit for the time she was in custody after her competency was restored. Respondent concedes the first three of these contentions, but not the fourth.

1. The count 1 and count 8 convictions must be vacated because they arise from a single stalking offense.

Subdivision (a) of section 646.9 defines the crime of stalking, permitting a sentence of up to three years in prison. Subdivision (b) provides for a felony sentence of up to four years if a valid restraining order is outstanding when subdivision (a) is violated. And subdivision (c) provides for a felony sentence of up to five years if the stalker has specified prior convictions.

Brandon was convicted in count 7 of stalking with a prior stalking conviction (§ 646.9, subd. (c)(2)), in count 1 with simple stalking (§ 646.9, subd. (a)), and in count 8 with stalking with a prior conviction for criminal threats (§ 646.9, subd. (c)(1)). But although the subdivisions of section 646.9 provide alternate penalties for stalking, depending on the stalker's criminal history, they do not constitute separate substantive offenses. (*People v. Muhammad* (2007) 157 Cal.App.4th 484, 486, 493-494 [subdivisions (b) and (c) of section 646.9 establish higher base terms when stalking is committed by those with particular histories of misconduct].) Here, when Brandon committed the single offense of stalking, her history of misconduct satisfied the penalty provisions not just of subdivision (a) of section 646.9, but also subdivisions (c)(1) and (c)(2) of that section, making her subject to greater punishments than are imposed by subdivision (a) alone.

Although Brandon was charged with the stalking offense in counts 1, 7, and 8, she could be convicted of only one count of stalking. The conduct charged in each of the three counts is the same; it is Brandon's criminal history, not any different conduct or victim, that justifies the different prescribed punishments. Consequently, only the count 7 stalking conviction—the principal term selected by the court—may remain; the count 1 and 8 stalking convictions must be vacated. (*People v. Muhammad*, *supra*, 157 Cal.App.4th at p. 494 [vacating three of four convictions for stalking single victim during same period of time]; *People v. Ryan* (2006) 138 Cal.App.4th 360, 371 [vacating two of four convictions arising from just two forgery incidents]; *People v. Coyle* (2009) 178 Cal.App.4th 209, 217-218 [vacating two of the three convictions for murder committed during burglary, murder committed during robbery, and second degree murder].)

2. The two prior prison-term enhancements must be vacated and the abstract corrected, because more than five years passed between Brandon's most recent prison term and her current offenses.

The trial court sentenced Brandon to enhancements of one year each for two prior prison terms, under subdivision (b) of section 667.5. As Brandon contends, and respondent agrees, in this case the evidence does not support the fourth element of the required proof.

Imposition of a sentence enhancement for a prior prison term requires four elements of proof. The first three elements are that the defendant was previously convicted of a felony, that the defendant was imprisoned as a result of that conviction, and that the defendant completed that term of imprisonment. The fourth required element—known as the washout rule—is proof that the defendant did not remain free of both prison custody and the commission of a new offense resulting in a felony conviction, for a period of five years. (*People v. Tenner* (1993) 6 Cal.4th 559, 563; *People v. Fielder* (2004) 114 Cal.App.4th 1221, 1229.) "According to the 'washout' rule, if a defendant is free from both prison custody *and* the commission of a new felony for *any* five-year period following discharge from custody or release on parole, the

enhancement does not apply. (§ 667.5, subd. (b); *People v. Fielder*, *supra*, 114 Cal.App.4th at p. 1229.) It is proof of this fourth element that is missing here.[3]

The washout rule applies when the prosecution fails to prove that its two elements—prison custody and commission of an offense resulting in a new felony conviction—occurred within a five-year period. (*People v. Fielder*, *supra*, 114 Cal.App.4th at p. 1231.) Here, the washout rule applies because its two elements did not occur within five years of each other.

According to the prosecution's evidence (two "section 969b prison packets" admitted into evidence, relating to Brandon's two prior convictions and incarcerations[4]) Brandon was placed in prison custody with a two-year sentence for her 1996 stalking conviction on April 25, 1996, and was discharged from custody on February 2, 1998. She was convicted of criminal threats and stalking on February 20, 2002, with a sentence of four years, eight months in prison, with 889 days of custody credit. She was discharged from prison on May 1, 2003, apparently with a condition of parole that she receive treatment at Patton State Hospital.[5]

According to the prosecution's proof, Brandon therefore was free from both prison custody and the commission of a new felony offense between May 1, 2003 and July 24, 2009, the date on which the stalking on which her current conviction is based began—a

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[3] The prosecution bears the burden of proving beyond a reasonable doubt each element of the section 667.5, subdivision (b) sentence enhancement. The question on appeal is whether substantial evidence supports the trial court's finding that the enhancement is established. (*People v. Fielder*, *supra*, 114 Cal.App.4th at p. 1232.)

[4] Section 969b provides that certified copies of prison records (which is sometimes referred to as a "prison packet") may be used as prima facie evidence that a person being tried for a crime has been convicted and served a term of imprisonment. (*People v. Tenner*, *supra*, 6 Cal.4th at p. 563.)

[5] The prison records also indicate that Brandon did not violate her parole, for she was discharged from Patton State Hospital on May 1, 2006, having served the maximum period of parole.

period of more than five years.[6] The evidence therefore is insufficient to support the two one-year sentence enhancements arising from Brandon's 1996 and 2002 convictions.[7]

3. Brandon is entitled to conduct credit based on 1,011 days of eligible custody, resulting in at least 504 days of conduct credit.

Brandon contends, and respondent agrees, that the trial court's award of conduct credits is in error in two respects: First, it fails to provide her with conduct credits based on the time she was confined in a state mental hospital after the hospital staff had determined her to be competent to stand trial but before she was returned to jail, which the law recognizes as eligible custody time. Second, the trial court erroneously limited her conduct credits to 15 percent of her eligible custody time, misapplying section 2933.1, subdivision (c) to Brandon's offenses that are not among the violent felonies to which that limitation applies. Brandon and respondent also agree that when these errors are corrected Brandon is entitled to *at least* 504 days of conduct credit; Brandon contends she is actually entitled to twice that total (one day of conduct credit for each eligible day of custody credit, rather than one day of conduct credit for each day of custody credit), a contention we address in section 4 of this opinion, below.

A sentence that fails to award legally mandated custody credit is subject to correction at any time, and the same is true for the conduct credits computed on that basis. (*People v. Taylor* (2004) 119 Cal.App.4th 628, 647.) Because the actual time in custody is undisputed and the computation of the appropriate conduct credit involves no discretionary sentencing choices, these claims present questions of law to which we apply the de novo standard of review. (*People v. Johnson* (2007) 150 Cal.App.4th 1467, 1485;

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[6] Subdivision (d) of section 667.5 expressly provides that a discharge from custody includes a release on parole. (*People v. Nobleton* (1995) 38 Cal.App.4th 76, 84.)

[7] Although respondent correctly states (and Brandon agrees as a theoretical matter) that a retrial of the enhancements is not barred by double jeopardy principles, we believe that the expenditure of judicial resources that would result from a remand of the issue for retrial is unjustified, in the absence of any indication that evidence that could lead to a different result—evidence that would contradict the apparently unambiguous records of the Department of Corrections and Rehabilitation—exists.

Ghirardo v. Antonioli (1994) 8 Cal.4th 791, 799; *People v. Culp* (2002) 100 Cal.App.4th 1278, 1282.)

The record is less than clear exactly what the trial court concluded with respect to conduct credits, custody credits, and the allocation between them. But the parties accurately state the law with respect to the proper computation of these credits, and the record is unambiguous as to the facts on which the proper computation of credits is based. Accordingly, we conclude that the parties are correct in their agreed conclusion that Brandon is entitled to conduct credit based on 1,011 days of eligible custody, resulting in at least 504 days of conduct credit.

a. Brandon is entitled to conduct credits based on the time she was in state mental hospitals after the hospital staff determined her to be competent to stand trial but before she was returned to prison.

Brandon was placed in custody following her arrest on August 10, 2009, and was sentenced on June 28, 2013, for the offense that led to her conviction—a total period of 1,419 days for which she was entitled to custody credit under section 2900.5, subdivision (a).

Brandon was entitled to conduct credits under section 4019, based on the number of days she was in custody. She was not eligible for conduct credits based on the time she spent in state hospitals while she was subject to a finding of incompetency to stand trial; but she was eligible for conduct credits for the time after she was found by the hospital staff to be competent to stand trial, notwithstanding that she was not immediately returned to penal confinement. (*People v. Bryant* (2009) 174 Cal.App.4th 175, 182.)[8]

Brandon's presentence custody for which she is eligible for conduct credits therefore is marked by the following periods:

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[8] As discussed in greater detail in section 4 of this opinion, below, this provision has been held to require calculation of conduct credits based on the law in effect on the date of the prisoner's offense, without regard to the dates of the prisoner's incarceration. (E.g., *People v. Ramirez* (2014) 224 Cal.App.4th 1078, 1086; *People v. Miles* (2013) 220 Cal.App.4th 432, 436; *People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 52; *People v. Ellis* (2012) 207 Cal.App.4th 1546, 1550.)

From her August 10, 2009 arrest and incarceration, until her December 10, 2009 admission to Metropolitan State Hospital: 123 days of eligible custody.

From the September 30, 2010 finding by Metropolitan State Hospital staff that her competency to stand trial was restored, until her October 24, 2011 admission to Patton State Hospital: 390 days of eligible custody.

From the February 17, 2012 finding by Patton State Hospital staff that her competency to stand trial was restored, until she was sentenced to prison on June 28, 2013: 498 days of eligible custody.[9]

These periods of eligible presentence custody entitle Brandon to conduct credits calculated on the basis of a total of 1,011 days of eligible custody.

At the one-for-two ratio between conduct credits and custody credits that applied in August 2009, the time of Brandon's offenses, she would be entitled to six days of conduct credit for every four days of eligible custody. Because no credit is given for anything less than four days (*People v. Smith*, *supra*, 211 Cal.App.3d at p. 527), that is determined by dividing the number of eligible days in presentence custody by four in order to determine the number of four-day sets (and discounting any remaining fraction); then multiplying that whole-number quotient by two, to arrive at the number of credits. (*People v. Culp* (2002) 100 Cal.App.4th 1278, 1284; *People v. Smith*, *supra*, 211 Cal.App.3d at p. 527.)

Dividing the total eligible custody days, 1,011, by four yields a quotient of 252 sets of four, with three extra days for which no credit is given. Multiplying 252 by two yields a total of 504 days of conduct credit.

b. The statutory 15 percent violent-offense limit on custody credits does not apply to Brandon's offenses.

Section 2933.1, subdivision (c), provides that persons convicted of any felony offense listed in subdivision (c) of section 667.5 can earn conduct credits for no more than 15 percent of their actual custody time. Brandon contends, and respondent agrees,

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[9] Because a partial day of custody is treated as a whole day (*People v. Smith* (1989) 211 Cal.App.3d 523, 526), the last day of the inclusive dates is counted.

that in calculating the conduct credits to which she is entitled the court erroneously applied subdivision (c) of section 2933.1 to limiting Brandon's conduct credits to 15 percent of what the award would otherwise have been.

Although it is not clear to us exactly how the parties reached their common conclusion that the court applied the 15 percent limitation of section 2933.1, subdivision (c), it nevertheless is clear that the 15 percent limitation does not apply to Brandon's offenses. Brandon was convicted of violating section 646.9, stalking, and section 12020, subdivision (a)(4), possession of a dirk or dagger (repealed effective 2012, Stats. 2010, ch. 711, § 4 (Sen. Bill 1080)). Neither stalking nor possession of a dirk or dagger is among the violent felonies listed in section 667.5, subdivision (c). Therefore—as the parties to this appeal have agreed—it would be error to apply the 15 percent limitation of section 2933.1, subdivision (c), to the calculation of Brandon's conduct credits. Brandon is entitled to 504 conduct credits without reduction.

4. Brandon is not entitled to one day of conduct credit for each eligible day of custody credit.

When Brandon committed her offenses in August 2009, section 4019 provided that a defendant was entitled to presentence conduct credits (for work and good behavior) at the then-applicable one-for-two rate of two days for every four days in custody. (Former § 4019, subd. (f), as amended by Stats. 1982, ch. 1234, § 7, pp. 4553, 4554.) The Legislature amended section 4019 effective January 2010, to provide one-for-one conduct credit (two days of conduct credit for every two days of custody) for certain defendants, but retaining the one-for-two conduct credits for defendants such as Brandon, who had a prior conviction for a serious felony. (Stats. 2009-2010, 3d Ex. Sess., ch. 28, § 50, p. 5271; *People v. Miles* (2013) 220 Cal.App.4th 432, 436.) And in 2010, the Legislature again amended section 4019, restoring the one-for-two conduct credit provision for defendants whose offenses predated September 28, 2010. (Former § 4019, subds. (b) & (g), Stats. 2010, ch. 426, §§ 1, 2, 5; *People v. Verba* (2012) 210 Cal.App.4th 991, 993, review den.)

In 2011, section 4019 was again amended as part of the Criminal Justice Realignment Act, to provide for conduct credits at the two-for-one rate of four days for every two days in actual custody. (§ 4019, subds. (b), (c) & (f), as amended by Stats. 2011, ch. 15, § 482.) Section 4019, subdivision (h), provides that these changes "shall apply prospectively," and "any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law." (§ 4019, subd. (h), as amended by Stats. 2011, ch. 39, § 53.)

Brandon argues that she is entitled to conduct credits at the one-to-one rate for her time in presentence custody on and after October 1, 2011 until her sentencing, under the current section 4019, which would entitle her to 766 days of conduct credit. Even if this result is not required by section 4019 itself, she contends, it is required by the equal-protection provisions of the state and federal Constitutions. Respondent disagrees, contending that Brandon is entitled to custody credits only at the rate that section 4019 provided at the time of her offenses, entitling her to 504 days of credit.

In addressing these contentions we do not write on a clean slate. The California courts of record that have reviewed these issues has concluded, as we do, that section 4019 requires calculation of conduct credits based on the law as it was at the time of the prisoner's offenses, without regard to changes in the law during the prisoner's presentence incarceration, and that this result does not violate the appellants' right to equal protection of the laws. (See *People v. Rajanayagam*, *supra*, 211 Cal.App.4th at pp. 51-52; *People v. Ellis*, *supra*, 207 Cal.App.4th at pp. 1552-1553.)

a. Section 4019 requires calculation of conduct credits based on the law at the time of the prisoner's offenses.

Section 4019 provides in its first sentence that the changes enacted by the 2011 Realignment Act "shall apply prospectively" and shall apply to prisoners confined to jail facilities for crimes "committed on or after October 1, 2011." Brandon's offenses were committed before that date. Unless there is some other provision for the retroactive application of section 4019's 2011 changes, subdivision (h)'s first sentence precludes the application of section 4019's current version to Brandon, by providing unequivocally that

its changes "apply prospectively," and that they apply only to prisoners confined for offenses "committed on or after October 1, 2011."

Brandon argues that the second sentence of subdivision (h) supplies the needed provision for the retroactive application of section 4019's 2011 changes, by providing that "Any days earned by a prisoner prior to October 1, 2011 shall be calculated at the rate required by the prior law." (§ 4019, subd. (h).) By specifying that any days earned *before* October 1, 2011, are calculated "at the rate required by the prior law," he argues, subdivision (h) implies that custody credits earned *after* that date must be calculated at the rate specified by the current law, regardless of the date of the offense. We do not agree.

To interpret subdivision (h) as Brandon suggests would require us to ignore its first sentence's provisions that the changes to section 4019 apply prospectively, not retroactively, and that they apply to prisoners confined for offenses "committed on or after October 1, 2011." Were we to read the second sentence of subdivision (h) as Brandon urges, to mean that the changes to section 4019 apply to the time she was confined after October 1, 2011, we would have to disregard the first sentence's positive provision that the law's changes "shall apply prospectively," and that they "shall apply to prisoners who are confined . . . for a crime committed on or after October 1, 2011. As Brandon reads subdivision (h), these provisions have no purpose—violating the settled rule of statutory construction that "'"A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error."'" (*People v. Rajanayagam*, *supra*, 211 Cal.App.4th at p. 51; *People v. Ramirez* (2014) 224 Cal.App.4th 1078, 1086.)

The express provisions of subdivision (h)'s first sentence are bolstered by the settled rule that "'No part of [the Penal Code] is retroactive, unless expressly so declared.'" (*People v. Brown* (2012) 54 Cal.4th 314, 319; *People v. Rajanayagam*, *supra*, 211 Cal.App.4th at p. 50.) Even if subdivision (h)'s second sentence, taken alone, could be understood to mean that the changes to section 4019 apply to the time Brandon

was confined after October 1, 2011, it cannot be so read in the context of subdivision (h)'s first sentence. "'In applying this principle, we have been cautious not to infer retroactive intent from vague phrases and broad, general language in statutes. [Citations.] Consequently, '"'a statute that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective.'"'" (*People v. Rajanayagam*, *supra*, 211 Cal.App.4th at p. 50, quoting *People v. Brown*, *supra*, 54 Cal.4th at p. 319.) In "reading the first and second sentences together, the implication is the enhanced conduct credit provision applies to defendants who committed crimes before October 1, 2011, but who served time in local custody after that date. To isolate the verbiage of the second sentence would defy the Legislature's clear intent in subdivision (h)'s first sentence and contradict well-settled principles of statutory construction." (*People v. Rajanayagam, supra,* 211 Cal.App.4th at p. 52.)

We thus conclude as a matter of statutory construction that the changes to section 4019 apply only prospectively, to offenses committed after October 1, 2011. (*People v. Miles* (2013) 220 Cal.App.4th 432, 436; *People v. Rajanayagam*, *supra,* 211 Cal.App.4th at pp. 51-52; *People v. Kennedy* (2012) 209 Cal.App.4th 385, 395-396; *People v. Ellis, supra,* 207 Cal.App.4th at pp. 1552-1553; see *People v. Ramirez*, *supra*, 224 Cal.App.4th at p. 1086.)

b. Brandon's right to equal protection of the laws does not require application of section 4019's current terms.

In *People v. Verba*, *supra*, 210 Cal.App.4th 991, this court held that "the right to equal protection does not prevent the Legislature from limiting the increased level of presentence conduct credits to detainees who committed their crimes on or after the October 1, 2011 operative date" of section 4019. Brandon's appeal argues that we and the other courts that have reached that conclusion are in error, and that the conclusion should now be rejected. We decline the invitation.

In *People v. Verba* this court was asked to hold that section 4019 violates the defendant's right under the state and federal Constitution to equal protection of the laws, by awarding conduct credits at differing rates to defendants who are similarly situated in

the sense that they committed equivalent offenses, but are treated differently depending only on the date of their offenses. (*People v. Verba*, *supra*, 210 Cal.App.4th at pp. 995-996.) We held in that case that under section 4019 prisoners who committed their offenses before and after October 1, 2011, are indeed similarly situated for the purposes of the statutory provisions for conduct credit. "For purposes of receiving conduct credit, nothing distinguishes the status of a prisoner whose crime was committed after October 1, 2011, from one whose crime was committed before that date." (*Id.* at p. 996.) However, we also found that the statute's distinction is rationally justified: "We see nothing irrational or implausible in a legislative conclusion that individuals should be punished in accordance with the sanctions and given the rewards in effect at the time they committed their offense." (*Id.* at p. 997.)

The Legislature's 2011 decision to increase the amount of presentence credits a defendant could earn was "'intended to save the state money,'" not to serve as an incentive for better prisoner behavior. (*People v. Verba*, *supra*, 210 Cal.App.4th at pp. 995-996; *People v. Lara* (2012) 54 Cal.4th 896, 902.) And the Legislature was entitled to decide that the fiscal emergency justifying the increase in rate credits would be earned also required that the change take affect only after a period of time: "A slightly delayed operative date, the Legislature may have believed, struck a proper, rational balance between the state's fiscal concerns and its public safety interests." (*People v. Verba*, *supra*, 210 Cal.App.4th at p. 997.) For that reason (among the others discussed in that case), we concluded that there is "nothing irrational or implausible in a legislative conclusion that individuals should be punished in accordance with the sanctions and given the rewards in effect at the time they committed their offense," rather than the time of the statute's enactment or effective date. (*Ibid.*)[10]

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[10] Other rational justifications identified in *People v. Verba* for the legislative distinction between those who committed their offenses before and after October 1, 2011, are that the Legislature has the "right to control the risk of new legislation by limiting its application"; and that "by tying the increased level of conduct credits to crimes committed on or after a future date, [the Legislature] was preserving the deterrent effect

"Under the very deferential rational relationship test, we will not second-guess the Legislature and conclude its stated purpose is better served by increasing the group of defendants who are entitled to enhanced conduct credits when the Legislature has determined the fiscal crisis is best ameliorated by awarding enhanced conduct credit to only those defendants who committed their offenses on or after October 1, 2011." (*People v. Rajanayagam*, *supra*, 211 Cal.App.4th at p. 56.) For these reasons we reject Brandon's equal protection argument.

Conclusion

As Brandon and respondent agree, (1) the count 1 and count 8 convictions must be vacated because they arise from a single stalking offense; (2) the finding that Brandon suffered two prior prison terms must be vacated because more than five years had passed after her last prison term and before her current offenses; (3) Brandon's custody days were undercounted and she was erroneously credited with only 15 percent of her actual custody days; and (4) Brandon is not entitled to additional credit for the time she was in custody after October 1, 2011.

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of the criminal law as to those crimes committed before that date." (*People v. Verba*, *supra*, 210 Cal.App.4th at p. 997.)

Disposition

The case is remanded to the superior court with directions (1) to vacate the count 1 and count 8 stalking convictions; (2) to vacate the two one-year sentence enhancements; and (3) to award defendant 504 days of presentence conduct credit, all in accordance with this opinion. The trial court is directed also to amend the abstract of judgment accordingly and to forward a copy thereof to the Department of Corrections. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.