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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re DUANE LANZI,	C064953
On Habeas Corpus.	(Super. Ct. No. HCCR109)

Appellant Duane Lanzi appeals from an order of the Yolo County Superior Court denying his petition for a "Writ of Habeas Corpus and/or Writ of Error Coram Nobis" whereby he sought additional presentence conduct credits as provided by recent amendments to Penal Code section 4019. The court denied the petition on the ground that appellant's judgment had become final prior to January 25, 2010, the effective date of the new amendments. We shall remand to the trial court with directions to award defendant the additional credits unless the court determines that defendant is ineligible because he has been required to register as a sex offender or has a prior violent or serious felony conviction.

PROCEDURAL HISTORY

On October 23, 2009, appellant pled no contest to receiving stolen property. On that same date, he was sentenced to a

stipulated term of two years in state prison. On December 2, 2009, the court awarded appellant 48 days of presentence custody credit, consisting of 32 days for actual custody and 16 days for good conduct credit.

Effective January 25, 2010, the Legislature amended Penal Code section 4019 (Sen. Bill No. 3X 18) (2009-2010 3d Ex. Sess.) essentially to double the rate at which a specified class of prisoners (eligible prisoners) could earn presentence conduct credits. (See Stats. 2009, 3d Ex. Sess., ch. 28, § 50.)

On January 27, 2010, appellant filed a "motion seeking to recall [his] sentence pursuant to Penal Code section 1170(d) for the purpose of awarding [him] the presentence custody credits" provided by Senate Bill No. 3X 18.[1] On February 11 the court denied appellant's request to recall his sentence.

On March 22, 2010, appellant filed a petition entitled "Writ of Habeas Corpus and/or Writ of Error Coram Nobis" in the Yolo County Superior Court, again seeking the additional conduct credits provided by Senate Bill No. 3X 18. On April 12, the court, citing this court's decision in *People v. Brown* (2010) 182 Cal.App.4th 1354, summarily denied the petition "because [appellant's] judgment was final prior to the January 25, 2010

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[1] "[Penal Code] Section 1170, subdivision (d) does not confer standing on a defendant to initiate a motion to recall a sentence. Instead, that section permits a court to recall a sentence 'on its *own* motion.'" (*People v. Pritchett* (1993) 20 Cal.App.4th 190, 193.) Hence, appellant's "motion" is legally no more than a request for the court to initiate a recall of his sentence.

effective date of the statutory revision."[2] On May 5 appellant filed a notice of appeal from the court's denial of his petition.

DISCUSSION

Appellant contends that principles of equal protection require retroactive application of the January 25 amendment to him.[3] The People respond that because the purpose of the January 25 amendment was, at least in part, to encourage good behavior, and because "it is impossible to influence behavior after it has occurred" (*In re Stinnette* (1979) 94 Cal.App.3d 800, 806), the amendment should be read as applying prospectively only. Having concluded that a partial intent of the January 25 amendment was to encourage good behavior, the People go on to conclude equal protection principles are not violated because this partial intent constitutes a rational basis for distinguishing between final and nonfinal judgments.

In *In re Kemp* (2011) 192 Cal.App.4th 252, 258-263, we addressed and rejected the People's position. We held "that

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[2] Review was granted by the California Supreme Court in *Brown* on June 9, 2010 (S181963). In *Brown*, we limited our holding that the January 25 amendment was retroactive to prisoners whose judgments were not final prior to January 25, 2010. (*People v. Brown*, *supra*, 182 Cal.App.4th at p. 1361.)

[3] Appellant also contends that his judgment was not final prior to January 25, 2010, because the 120-day period permitting the court to recall his sentence (Pen. Code, § 1170, subd. (d)) did not expire until February 20, 2010. In light of our resolution of the retroactivity issue, we need not address this contention.

irrespective of the date that a prisoner's judgment became final, federal and state constitutional principles of equal protection require that the [January 25, 2010] amendments to Penal Code section 4019 . . . , which increase the rate at which a specified class of prisoners earns conduct credits, must be applied retroactively." For the same reasons we rejected the People's arguments in *Kemp*, we likewise reject them here.

DISPOSITION

The matter is remanded to the Yolo County Superior Court with directions to award appellant an additional 16 days of presentence conduct credit unless the court determines that appellant is ineligible for the increased award because he is required to register as a sex offender or has been committed for or convicted of a violent felony (Pen. Code, § 667.5, subd. (c)) or a serious felony (Pen. Code, § 1192.7, subd. (c)).

ROBIE, J.

We concur:

HULL, Acting P. J.

DUARTE, J.