Filed 1/24/12 In re Cameron CA3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

In re CHRISTINA CAMERON on Habeas Corpus.	C065911 (Super. Ct. No. 10HB5321)

On May 27, 2009, the court sentenced petitioner Christina Cameron to a stipulated term of 13 years in prison based upon her guilty pleas to one count of identity theft (Pen. Code, § 530.5, subd. (a)),[1] 12 counts of second degree burglary (§§ 459, 460), and an admission of having served two prior prison terms (§ 667.5, subd. (b)). At the time of petitioner's sentencing, section 4019 provided that conduct credits could be earned at the rate of two days for every four days served. (§ 4019, former subds. (b), (c).) Petitioner received presentence custody credit of 608 days, consisting of 406 days

[1] Undesignated statutory references are to the Penal Code.

of actual time served plus 202 days of conduct credit. Petitioner did not appeal.

Effective January 25, 2010, the Legislature enacted Senate Bill No. 3X 18,[2] which amended section 4019 (the January 25 amendment) to provide essentially two days of conduct credit for every two days actually served in presentence custody to a class of prisoners (eligible prisoners) deemed safe for early release from prison. This class consists of prisoners who were neither required to register as sex offenders, nor committed for serious felonies, nor who had prior convictions for serious or violent felonies.

On July 23, 2010, petitioner filed a propria persona habeas corpus petition in the superior court seeking, inter alia, to have her "judgment of abstract [*sic*] . . . reflect the appropriate amount of credits as dictated by law," apparently referring to the January 25 amendment. The court summarily denied the petition on the ground it failed to state a prima facie case for relief.

On August 27, 2010, petitioner filed a petition in this court claiming that she was entitled to 406 days of additional conduct credits based on the January 25 amendment. We issued an order to show cause and appointed counsel to represent petitioner. The People have filed their return and petitioner has filed her traverse to the return.

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[2] Enacted during the 2009-2010 Third Extraordinary Session. (See Stats. 2009, ch. 28, § 50.)

Petitioner argues she is entitled to the January 25, 2010, rate under principles of federal equal protection. The People counter that equal protection was not violated because the January 25 amendment seeks to encourage good conduct by prisoners awaiting final sentencing and thus excludes prisoners whose judgments are final; hence, the two groups are not similarly situated. The People also propose a rational basis for the disparate treatment, viz.: that retroactive application of the new amendment to final judgments would violate the separation of powers doctrine. We reject the People's contentions and conclude that under federal constitutional rules of equal protection the new amendment is retroactive to all eligible prisoners irrespective of the dates their judgments became final.[3]

EQUAL PROTECTION

"The equal protection guarantees of the Fourteenth Amendment and the California Constitution are substantially equivalent and analyzed in a similar fashion." (*People v. Leng*

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[3] The People also contend the petition should be dismissed because petitioner has failed to provide documentation supporting the time credits she received and because she has failed to rebut section 3's presumption that statutes are to be prospectively applied unless retroactivity is expressly declared.

On June 9, 2011, we granted petitioner's request for judicial notice of documents that establish her time credits. And our determination that federal constitutional principles of equal protection require retroactive application of the January 25 amendment renders the petition's second contention moot.

(1999) 71 Cal.App.4th 1, 11.) We first ask whether the two classes are similarly situated with respect to the purpose of the law in question, but are treated differently. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) If groups are similarly situated but treated differently, the state must then provide a rational justification for the disparity. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1200-1201.)

The People's justification for the new amendment, to wit, to encourage good behavior, does not comport with the Legislature's stated purpose, and we are bound by the latter. (*People v. Butler* (1996) 43 Cal.App.4th 1224, 1234.) The purpose of the new amendment, as expressly stated in Senate Bill No. 3X 18, was to aid the state in addressing the "fiscal emergency" declared by the Governor in December 2008, rather than to encourage good behavior as asserted by the People.[4] (Stats. 2009, ch. 28, § 62.) The new amendment accomplishes this fiscal purpose by identifying a class of prisoners deemed safe for early release and increasing the rate at which they earn presentence conduct credits, thereby reducing the cost of their incarceration. Dividing the class of eligible prisoners into two groups based on the date their judgments became final bears no rational relationship to either their dangerousness or

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[4] Because the purpose of Senate Bill No. 3X 18 was solely fiscal, *In re Stinnette* (1979) 94 Cal.App.3d 800 and *In re Strick* (1983) 148 Cal.App.3d 906, relied on by the People, are distinguishable because the purpose of the statutes at issue in those cases was to encourage good behavior. (*Stinnette* at p. 806; *Strick* at p. 913.)

their cost of incarceration. (Cf. *In re Kapperman* (1974) 11 Cal.3d 542, 544-550 [finality of judgment does not constitute rational basis for disparate treatment between groups of prisoners equally situated].) Consequently, the new amendment applies to all eligible prisoners regardless of when their judgments became final.

SEPARATION OF POWERS

Nor does retroactive application of the new amendment to prisoners whose judgments were final prior to January 25, 2010, violate the separation of powers doctrine by interfering with judgments already final, as urged by the People. The awarding of additional conduct credits is nothing more than a ministerial act and does not constitute a resentencing or a material interference with the judgment previously imposed. (See *Younger v. Superior Court* (1978) 21 Cal.3d 102, 117-118; *People v. Sage* (1980) 26 Cal.3d 498, 508-509; *In re Kapperman*, *supra*, 11 Cal.3d at pp. 548-550.)

CALCULATION OF CREDITS

Petitioner received total presentence custody credit of 608 days, consisting of 406 days for actual custody plus 202 days for conduct. Petitioner is therefore entitled to an additional 204 days of conduct credit, for a total of 812 days.

DISPOSITION

The matter is remanded to the superior court with directions to award petitioner an additional 204 days of presentence conduct credit, for a total presentence custody credit of 812 days. The court is further directed to prepare an

amended abstract of judgment reflecting those changes and to forward a certified copy of the amended abstract to the Director of the Department of Corrections and Rehabilitation.

RAYE, P. J.

We concur:

BLEASE, J.

MURRAY, J.