

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PEOPLE OF THE STATE OF CALIFORNIA,)	No. A125258
v. )	
)	Lake County
ANTHONY LEE CASWELL, )	Superior Court
Defendant and Appellant. )	No. CR034431
_____ )	

**APPELLANT'S SUPPLEMENTAL OPENING BRIEF**

Appeal from the Judgment of the Superior Court  
of the State of California  
in and for the County of Lake

HONORABLE ARTHUR H. MANN, JUDGE

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Under the First District Appellate Project  
Independent-Case System

## TABLE OF CONTENTS

Table of Authorities	ii
REQUEST TO FILE SUPPLEMENTAL OPENING BRIEF .....	1
ARGUMENT .....	2
APPELLANT IS ENTITLED TO ADDITIONAL PRESENTENCE CONDUCT CREDITS UNDER AMENDED SECTION 4019. ....	3
A. Relevant Facts and Introduction .....	3
B. Standard of Review .....	4
C. Section 4019, Past and Present. ....	4
D. A Criminal Defendant is Entitled to the Benefit of a Law that Reduces His Punishment While His Appeal is Pending. ....	-PAGE-
E. Retroactive Application Best Effectuates the Legislature’s Intent. ....	11
F. Failure to Apply Amended Section 4019 to Appellant Would Violate His State and Federal Right to Equal Protection. ....	13
G. <i>People v. Rodriguez</i> Was Wrongly Decided. ....	17
1. <i>Rodriguez</i> erred in finding that <i>Estrada</i> does not apply to section 4019. ...	17
2. <i>Rodriguez</i> erred by failing to address <i>People v. Sage</i> . ....	20
3. <i>Rodriguez</i> erred by relying a Court of Appeal case at odds with later California Supreme Court precedent. ....	22
CONCLUSION .....	24

## TABLE OF AUTHORITIES

Case	Page
<i>In re Estrada</i> (1965) 63 Cal.2d 740 .....	6-12, 17-20
<i>In re Kapperman</i> (1974) 11 Cal.3d 542 .....	14,16,18,21
<i>In re Stinnette</i> (1979) 94 Cal.App.3d 800 .....	22
<i>People v. Brown</i> (2010) 182 Cal.App.4th 1354 .....	2, 7-13, 18
<i>People v. Brunner</i> (1983) 145 Cal.App.3d 761 .....	15
<i>People v. Doganiere</i> (1978) 86 Cal.App.3d 237 .....	9,16
<i>People v. House</i> (April 9, 2010) __ Cal.App.4th 2010, 2010 Cal.App.Lexis 493. ....	2,7,10,12,13,18
<i>People v. Hunter</i> (1977) 68 Cal.App.3d 389 .....	8,9,18
<i>People v. Landon</i> (April 13, 2010) __ Cal.App.4th ___, 2010 Cal.App. Lexis 517 .....	2 7, 10-13, 18
<i>People v. Rish</i> (2008) 163 Cal.App.4th 1370 .....	4
<i>People v. Rodriguez</i> (2010) 182 Cal.App.4th 535 .....	2, 20, 17,18,19,20,22,23
<i>People v. Sage</i> (1980) 26 Cal.3d 498.....	7,15,16,21-22
<i>People v. Vieira</i> (2005) 35 Cal.4th 264 .....	7

# TABLE OF AUTHORITIES

## Statutes

Penal Code,	
section 1192.7 .....	4
section 2900.5, subd. (a) .....	4,14,18
former section 4019, subd. (f) .....	5
former section 4019, subds. (b) and (c) .....	5
section 4019 .....	passim

## Other

### California Constitution

Article I, section 7 .....	13
Article IV, section 8 .....	1,6
Article IV, section 16 .....	13
Cal. Senate Journal, 2009-10 Third Extraordinary Session, Nov. 30, 2009, 273.....	1-2
Stats. 2009-2010, 3rd Ex.Sess., c. 28 (S.B.18), § 50 .....	5
Stats. 2009, 3d Ex. Sess., ch. 28, § 62 .....	12
United States Constitution, Fourteenth Amendment .....	13

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**APPELLANT'S SUPPLEMENTAL OPENING BRIEF**

**REQUEST TO FILE SUPPLEMENTAL OPENING BRIEF**

Appellant requests leave to file this supplemental opening brief raising one issue -- the application of revised Penal Code section 4019<sup>1</sup> credits to reduce his sentence. The issue has arisen since appellant filed his Opening Brief on November 24, 2009.

The Legislature amended section 4019 at a special session that adjourned on October 30, 2009. The new law went into effect on January 25, 2010, the 91st day after close of that session. (Cal. Const. Art. 4, § 8(c)(1); Cal. Senate Journal,

<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise noted.

2009-10 Third Extraordinary Session, Nov. 30, 2009, at p. 273 [Third Extraordinary Session adjourned Oct. 26, 2009].)

Three appellate courts have recently held that the statute applies to cases like appellant's that are not yet final on appeal. (*People v. Brown* (2010) 182 Cal.App.4th 1354 [*Brown*]; *People v. Landon* (April 13, 2010) \_\_ Cal.App.4th \_\_, 2010 Cal.App. Lexis 517; and *People v. House* (April 9, 2010) \_\_ Cal.App.4th 2010, 2010 Cal.App. Lexis 493.) One appellate court --- which issued the first opinion on the subject -- has held to the contrary. (*People v. Rodriguez* (2010) 182 Cal.App.4th 535, mod. on March 30, 2010, \_\_ Cal.App.4th \_\_, reprinted as modified at 2010 Cal.App. Lexis 250.)

Accordingly, the issue is ripe for decision by this Court.

Appellant respectfully requests that this Court allow him to file this Supplemental Opening Brief in the interests of judicial economy and the preservation of resources, and to allow him to raise the issue while his case is pending on appeal, as that procedural posture may be dispositive of his right to relief.

## ARGUMENT

### APPELLANT IS ENTITLED TO ADDITIONAL PRESENTENCE CONDUCT CREDITS UNDER AMENDED SECTION 4019.

#### A. Relevant Facts and Introduction

Mr. Caswell was convicted of giving a minor under 14 marijuana (count two - Health & Saf. Code, § 11361, subd. (b)), which is not a serious or violent felony. (CT 27.) The information did not allege any violent priors or any offenses requiring sex offender registration. (CT 2-3.)

The court awarded 177 days credit, calculated as 119 actual days and 58 days conduct credit. (CT 124.) The calculation was correct under then-effective section 4019.

Appellant is now entitled to 58 additional days of conduct credits under the amended version of section 4019 that went into effect on January 25, 2010. That statute provides for two days of work and conduct credit for every two days of actual custody for defendants who, like appellant, have no prior serious or violent felony convictions, are not required to register as a sex offender, and

whose current offense is not a section 1192.7 serious felony.

Appellant is entitled to the benefit of the amended statute because: 1) a statute lightening punishment must be applied to all defendants whose judgments are not yet final; 2) retroactive application best effectuates the Legislature's intent; and 3) the equal protection clauses of the state and federal constitutions require retroactive application to all defendants meeting the statute's requirements.

**B. Standard of Review**

An argument raising an issue of statutory construction is reviewed independently by the appellate court. (*People v. Rish* (2008) 163 Cal.App.4th 1370, 1381.)

**C. Section 4019, Past and Present.**

A defendant sentenced to state prison is entitled to credit against his sentence for all actual days spent in custody before sentencing, and for conduct credits pursuant to section 4019. (§ 2900.5, subd. (a).) Before January 25, 2010, section 4019 provided that for each six-day period of custody, one day was

deducted for performing assigned labor and one day was deducted for satisfactorily complying with the rules and regulations. (Former § 4019, subds. (b) and (c).) Thus “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.” (Former § 4019, subd. (f).)

In October of 2009, the Legislature amended section 4019 to increase presentence credits for defendants who, like appellant, have no current or prior convictions for serious or violent felonies and who are not required to register as sex offenders. (Stats. 2009-2010, 3rd Ex.Sess., c. 28 (S.B.18), § 50.)

The amended statute now provides that presentence credits accrue at twice the previous rate for all defendants except those required to register as a sex offender, committed for a serious felony, or with a prior conviction for a serious or violent felony. (§ 4019, subd. (b)(2) and (c)(2).) Thus one day of work credit and one day of conduct credit now may be deducted for each *four*-day period of confinement or commitment, so “if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody . . . .” (§ 4019, subd. (f).)

Senate Bill 18 went into effect on January 25, 2010. (Cal. Const. Art. 4, § 8(c) (1) [“a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed”]; Cal. Senate Journal, 2009-10 Third Extraordinary Session, Nov. 30, 2009, at p. 273 [Third Extraordinary Session adjourned Oct. 26, 2009].)

Because appellant’s conviction was not final on January 25, 2010, he is entitled to the benefit of the amended statute.

**D. A Criminal Defendant is Entitled to the Benefit of a Law that Reduces His Punishment While His Appeal is Pending.**

When the Legislature amends a law to reduce punishment, the amendment applies retroactively to all cases not yet final on the effective date of the statute. (*In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*).)

In *Estrada*, the high court held that section 3’s statement that Penal Code amendments operate prospectively does not apply to statutory amendments reducing punishment. It explained that when the Legislature amends a statute to lessen punishment, “it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment

for the commission of the prohibited act.” (*Estrada, supra*, 63 Cal.2d at p. 745.)

Thus it is “an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply.” (*Estrada, supra*, 63 Cal.2d at p. 745.) Accordingly, an amendment creating lighter punishment “can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final.”<sup>2</sup> (*Ibid.*) “

Three courts of appeal have now held that under *Estrada*, courts must apply newly amended section 4019 to reduce the sentences of all defendants whose cases are still pending on appeal. (*People v. Brown* (2010) 182 Cal.App.4th 1354 [*Brown*]; *People v. Landon* (April 13, 2010) \_\_ Cal.App.4th \_\_\_, 2010 Cal.App. Lexis 517 [*Landon*]; *People v. House* (April 9, 2010) \_\_ Cal.App.4th 2010, 2010 Cal.App. Lexis 493 [*House*].)

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<sup>2</sup> “[F]or the purpose of determining retroactive application of an amendment to a criminal statute, a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed.” (*People v. Vieira* (2005) 35 Cal.4th 264, 306 [citations and internal quotation marks omitted].)

The *Brown* court noted that Senate Bill 18 contains no express statement of intent, so “[i]f the amendment is a reduction in punishment, *Estrada* requires that we presume retroactive application, at least as to cases not yet final on the effective date.” (*Brown, supra*, at p. 1361.) It then relied on two cases to determine that a statute increasing credits reduces punishment, so falls under *Estrada’s* rule.

It noted that in *People v. Hunter* (1977) 68 Cal.App.3d 389, the Court of Appeal held that a defendant sentenced before the effective date of a statute increasing custody credits was entitled to the benefit of the new custody credits so long as his judgment was not yet final. (*Brown, supra*, at pps. 1361-1362.) The holding relied in part on the fact that, as here, the Legislature had not included a “prospective application only” limitation in the statute. (*Ibid.*)

The *Hunter* court acknowledged that *Estrada* dealt with a statute lessening punishment for a particular crime, while the statute before it concerned credit against a sentence imposed as a probation condition. However, it concluded that “the distinction is without legal significance.” (*Brown, supra*, at p. 1362, citing *People v. Hunter, supra*, 68 Cal.App.3d at p. 392.)

Accordingly, *Hunter* concluded that the amendment increasing custody

credits “must be construed as one lessening punishment” within the meaning of *Estrada*. (*Id.* at p. 13.)

The *Brown* court rejected the state’s contention that *Hunter* was distinguishable because it dealt with custody credits, rather than conduct credits. (*Brown, supra*, at pps. 1361-1362.) It noted that in *People v. Doganiere* (1978) 86 Cal.App.3d 237, the Court of Appeal applied *Estrada* to an amendment that -- like 4019 -- increased conduct credits.

The *Brown* court noted that in *Doganiere*, as in *Brown*, the state urged that *Estrada* did not apply because an amendment extending the opportunity to earn conduct credits is designed to control future behavior. (*Brown, supra*, at p. 1362.) Neither the *Brown* court nor the *Doganiere* court “was persuaded.” (*Ibid.*) As *Doganiere* explained: “Under *Estrada*, it must be presumed that the Legislature thought the prior system of not allowing credit for good behavior was too severe.” (*People v. Doganiere, supra*, at p. 240.)

In rejecting the argument that *Estrada* does not apply to credit increases, *Brown* court explained: “Whatever the ultimate purpose or purposes of the amendment to section 4019, the effect of the amendment is to reduce the overall

time of imprisonment, and, thus, the punishment, for those less serious offenders who have demonstrated good behavior while in custody. A prisoner released from prison one day sooner has been punished one day less in prison than he would have been had there not been a change in the law." (*Brown, supra*, at pps. 1364-1363.)

The *Landon* and *House* courts also rejected the state's argument that *Estrada* does not require that courts apply amended section 4019 retroactively. *Landon* noted: "We do not agree with the *Rodriguez* court that the present case is significantly different from the situation in *Estrada*. In *Estrada*, the amendment at issue lessened the punishment for a group of offenders. Here, the amendment to section 4019 reduces the punishment for a subset of prisoners who have good conduct in jail while awaiting trial. We do not deem it significant that the reduction in time is tied to conduct rather than to a specific offense." (*Landon, supra*, 2010 Cal.App. Lexis at p. 21; see also *House, supra*, 2010 Cal.App. Lexis at p. 12.)

Accordingly, *Estrada* controls, and appellant is entitled to the retroactive application of amended section 4019.

**E. Retroactive Application Best Effectuates the Legislature's Intent.**

*Brown* and *Landon* also held that even without *Estrada's* presumption of retroactivity, it "might reasonably be inferred" from section 59 of the bill that the Legislature intended that amended section 4019 to apply to all cases not yet final on appeal. (*Brown, supra*, at p. 1364; *Landon, supra*, at p. 22.) Section 59 provides:

The Department of Corrections and Rehabilitation shall implement the changes made by this act regarding time credits in a reasonable time. However, in light of limited case management resources, it is expected that there will be some delays in determining the amount of additional time credits to be granted against inmate sentences resulting from changes in law pursuant to this act. An inmate shall have no cause of action or claim for damages because of any additional time spent in custody due to reasonable delays in implementing the changes in the credit provisions of this act. However, to the extent that excess days in state prison due to delays in implementing this act are identified, they shall be considered as time spent on parole, if any parole period is applicable. (*Brown, supra*, at p. 1364.)

*Brown* and *Landon* both observed that it is arguable that if the Legislature did not intend retroactive application, it would not have been concerned with "delays in determining the amount of *additional time credits* to be granted against inmate sentences resulting from changes in law pursuant to this act." (*Brown,*

*supra*, at p. 1365, emphasis in original; *Landon, supra*, at pps. 21-23.) Thus, “while section 59 of Senate Bill 18 is certainly not an ironclad statement of legislative intent, it does provide some insight into what the Legislature sought to accomplish” -- retroactive application. (*Brown, supra*, at p. 1365.)

*Brown* noted that by its own terms, Senate Bill 18 “addresses the fiscal emergency declared by the Governor by proclamation on December 19, 2008.” (Stats. 2009, 3d Ex. Sess., ch. 28, § 62.) Further, “its provisions provide various means by which prison populations may be reduced, thereby easing prison overcrowding and lowering cost.” (*Brown, supra*, at p. 1365.)

Thus the court held that although amended section 4019 provides “further incentive for good behavior,” “it is obvious the true intent of the legislation was to reduce the time in prison for eligible defendants.” (*Brown, supra*, at p. 1365.) Thus, under *Estrada*, it must be presumed the legislation was intended to be applied retroactively unless a contrary intent is indicated.” (*Ibid.*)

The *House* court, too, found that the “fiscal emergency” setting and language support retroactive application. It explained: “Respondent points out that Senate Bill No. 18 explicitly states that ‘[t]his act addresses the fiscal

emergency declared by the Governor ... .' [citation omitted]. Contrary to Respondent's argument, we believe that this statement actually supports Appellant's position that the amendment should be applied retroactively. Applying the amendment prospectively does not address the fiscal emergency declared by the Governor." (*House, supra*, at pps. 12-13.)

Thus the *Brown*, *House*, and *Landon* courts found that "[r]ather than demonstrating a contrary intent, section 59 of Senate Bill 18, along with the overall purpose of the legislation, suggests the Legislature intended that the amendment to Penal Code section 4019 be applied retroactively, at least as to those eligible defendants whose convictions were not final on the effective date. (*Brown, supra*, at p. 1365; see also *House, supra*, at pps. 12-13; *Landon, supra*, at pps. 21-23.)

**F. Failure to Apply Amended Section 4019 to Appellant Would Violate His State and Fourteenth Amendment Right to Equal Protection.**

When the Legislature increases credits that reduce a defendant's sentence, the equal protection clauses of the California and federal constitutions<sup>3</sup> require

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<sup>3</sup> U.S. Const., XIV Amend.; Cal. Const., art. I, § 7; art. IV, § 16.

that the new law be applied to all defendants who are presently serving a sentence, on parole, or on probation. (*In re Kapperman* (1974) 11 Cal.3d 542, 546-550.)

In *Kapperman*, the California Supreme Court considered a 1972 amendment to section 2900.5 that credited county jail time served before prison to the prison sentence. *Kapperman, supra*, 11 Cal.3d at p. 544 The amended statute made the credit prospective only. (*Ibid.*) The defendant was delivered to the Department of Corrections before the date the statute was enacted, and his conviction was final before it went into effect. (*Id.* at 545.)

The high court held that the state constitutional guarantee of equal protection under the laws required that the full benefit of the new pre-sentence credit law be applied retroactively to everyone serving a sentence on March 4, 1972, regardless of when they were in the county jail or whether their conviction was final on the day the statute took effect. (*Kapperman, supra*, 11 Cal.3d at pp. 546-550.) Under *Kapperman*, then, appellant is entitled to retroactive application of amended section 4019.

Six years later, the high court held again that equal protection principles

require that all prisoners, regardless of the date they began serving prison terms, benefit when a new law or ruling increases credits. (*People v. Sage* (1980) 26 Cal.3d 498, 509, fn. 7<sup>4</sup>.) *Sage* interpreted the then-current interpretation section 4019. Before *Sage*, the statute's provision of credit for pre-sentence incarceration for prisoners "confined in or committed to a county jail . . . under a judgment of imprisonment" had been interpreted to limit pre-sentence credits to prisoners serving jail terms, and exclude those serving prison terms. (*Sage, supra*, 26 Cal.3d at p. 506.) Under this interpretation defendants convicted of misdemeanors (so sentenced only to jail) received time off their sentences for pre-sentence custody, while defendants convicted of felonies (so sentenced to prison) got no pre-sentence credits. (*Id.* at 506, 507-508.)

In an opinion section titled "Equal Protection," the high court held that there was no "rational basis for, much less a compelling state interest in, denying presentence conduct credit to detainee/felons." (*Sage, supra*, 26 Cal.3d at pp. 506-508.) Accordingly, the Court held that section 4019 must be construed as

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<sup>4</sup> *Sage* was superceded by statute on another issue. (See, *People v. Brunner* (1983) 145 Cal.App.3d 761, 764 and fn. 1.)

providing pre-sentence credits to all prisoners. (*Ibid.*)

Moreover, the Court held that its expansion of the previous application of section 4019 must be applied retroactively. (*Sage, supra*, 26 Cal.3d at p. 509, fn. 7.)

It explained: "Inasmuch as the same equal protection concerns as those underlying this court's decision in *In re Kapperman, supra*, 11 Cal.3d 542, i.e., the avoidance of arbitrary classification of prisoners, are present in the award of jail conduct credits, our holding that such credits must be awarded, if earned, for all precommitment jail time is retroactive." (*Ibid.*)

The Court of Appeal in *People v. Doganiere* also held that the equal protection clause commands retroactive application of an amendment increasing credits. It observed: "It would appear to be eminently unfair for a defendant to get 10 years for an offense committed on December 31 and another defendant to get 5 years for the identical offense committed on January 1." (*People v. Doganiere, supra*, 86 Cal. App. 3d at p. 239 fn. 1.)

Given that there is no rational basis for distinguishing between a defendant serving time before January 25, 2010 and someone serving time on that date or later, equal protection requires that amended section 4019 be applied

to appellant.

**G. *People v. Rodriguez* Was Wrongly Decided.**

The Fifth District Court of Appeal is the only Court of Appeal to hold that amended version of section 4019 does not apply retroactively. (*People v. Rodriguez, supra*, 182 Cal.App.4th 535, modified on March 30, 2010. [*Rodriguez*].

*Rodriguez* was the first opinion to consider amended section 4019. It is flawed by serious omissions and mistakes: this Court should not follow it.

1. *Rodriguez* erred in finding that *Estrada* does not apply to section 4019.

The *Rodriguez* court erred when it held that *In re Estrada* does not compel retroactive application of section 4019. (*Rodriguez, supra*, at p. 541.) Its belief that *Estrada* does not control because the high court there interpreted a more precise and limited reduction of punishment than that provided by section 4019 is mistaken.

*Estrada* stands for the principle that a statute that lightens punishment must be applied to all cases that are not yet final on appeal. As the appellate

courts in *Kapperman*,<sup>5</sup> *Hunter*,<sup>6</sup> *Brown*, *Landon* and *House* all held, that principle applies when the Legislature increases credits as well as when it reduces the sentence for a particular crime.

Thus the *Hunter* court crisply rejected the state's argument that that *Estrada* did not apply to laws increasing general credits, finding: "True, *Estrada* deals with a statute which lessens the maximum sentence for a particular crime while the amendment to section 2900.5 concerns credit against a lesser sentence imposed as a condition of probation. But in the circumstances which we here consider, the distinction is without legal significance." (*People v. Hunter, supra*, 68 Cal.App.3d at p. 393.)

Here, too, *Rodriguez* relied on a distinction without legal significance. It refused to follow *Estrada* because that case addressed a law reducing the penalty for a specific offense, rather than for a broad range of offenses, as here. It agreed with *Estrada* that such a reduction necessarily reflects a determination by the Legislature that "its former penalty was too severe and that a lighter punishment

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<sup>5</sup> *In re Kapperman, supra*, 11 Cal.3d 542.

<sup>6</sup> *People v. Hunter, supra*, 68 Cal.App.3d 389.

is proper for the commission of the prohibited act,” and that, therefore, the Legislature must have intended that *everyone* convicted of that offense should be subject to the penalty newly determined to be the proper one. (*Rodriguez, supra*, at p. 541, citing *Estrada, supra*, 63 Cal.2d at p. 745.) It insisted, however, that this principle does not apply to a legislative change increasing pre-sentencing credits, because “it is not obvious that the Legislature has determined the punishment for those felons who qualify for the more generous rate of conduct credit was too severe.” (*Rodriguez* at p. 542.)

This conclusion failed to consider that amended section 4019 necessarily reflects a legislative determination that the reward given to certain jail inmates for good conduct was previously too small. That determination is logically indistinguishable from a legislative determination that the punishment given to defendants who commit a certain type of crime was previously too large.

In *Estrada*, the Legislature enacted a statutory amendment reducing punishment for a subset of defendants convicted of prison escape – those who had accomplished their escapes without force or violence. The high court then determined that reducing punishment for those defendants necessarily implied

that the Legislature felt that *all* such defendants merited the lesser punishment -- regardless of when they were convicted.

Here, too, the Legislature enacted an amendment reducing punishment for a subset of prisoners -- those who had no prior violent or serious offenses, were not sex offenders, and had conducted themselves well while in jail awaiting trial. Under *Estrada*, then, the grant of increased pre-sentence credits to this subset of defendants necessarily implies that all defendants who meet the statutory criteria merit the lesser punishment -- regardless of when they were convicted, merit the lesser punishment. The fact that the reduction is tied to a category of offenses, rather than to one offense in particular, is a distinction without a difference.

2. *Rodriguez erred by failing to consider a controlling California Supreme Court case.*

The *Rodriguez* opinion is also flawed because it fails to consider a controlling California Supreme Court case -- *People v. Sage, supra*, 26 Cal.3d 498.

In *Sage*, the high court held that equal protection requires that expansion of pre-sentence credits for one defendant class (those serving their sentences in jail), must be extended to all other defendants (including those serving their

sentences in prison). It explained that applying the expanded credits to only one group would create two unequal, but similarly situated classes -- which would violate federal and state guarantees of equal protection. (*Sage, supra*, 26 Cal.3d at pp. 506-508.)

The *Sage* Court also held that equal protection required that its expansion of conduct credits to defendants in state prison be applied retroactively. (*Sage, supra*, 26 Cal.3d at p. 509, fn. 7.) It explained: "Inasmuch as the same equal protection concerns as those underlying this court's decision in *In re Kapperman, supra*, 11 Cal.3d 542, i.e., the avoidance of arbitrary classification of prisoners, are present in the award of jail conduct credits, our holding that such credits must be awarded, if earned, for all precommitment jail time is retroactive." (*Ibid.*)

Here, too, if amended section 4019 is not applied retroactively, two classes of state prisoners will be created: those who get the extra credits after January 24, 2010, and those who do not. Since both classes are identically situated because, both sets of defendants qualified for conduct credits by exhibiting good behavior in county jail, federal and state equal protection guarantees require that they be treated identically. Just as in *Sage*, there is no rational basis or compelling interest

in creating an “arbitrary classification.” (*Sage, supra*, 26 Cal.3d at p. 509, fn. 7.)

3. *Rodriguez* erred by relying a Court of Appeal case at odds with later California Supreme Court precedent.

The *Rodriguez* court’s reliance on *In re Stinnette* (1979) 94 Cal.App.3d 800 to find that failure to apply amended section 4019 retroactively does not violate equal protection is doubly flawed. (*Rodriguez* at p. 542.)

First, *Stinnette* is no longer good authority. It is a Court of Appeal case decided before the California Supreme Court’s decision in *People v. Sage*.<sup>7</sup> Thus to the extent that it once stood for the proposition that granting pre-sentence custody credits at different rates to different classes of identically-situated prisoners does not violate equal protection, *Stinnette* was overruled by *Sage*.

Second, *Stinnette* considered an amendment that created post-conviction conduct credits -- for the first time. The statute provided for prospective application, and the court ruled that such application would not violate equal protection principles because it was “impossible to influence behavior after it has occurred.” (*Stinnette, supra*, 94 Cal.App.3d at p. 806.)

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<sup>7</sup> *People v. Sage, supra*, 26 Cal.3d 498.

Since the statute was new, no prisoner had earned *any* conduct credit at the time it went into effect. Thus there was a rational basis on which to distinguish application prospectively -- that is, only to prisoners who would presumably attempt to conform their conduct to rules and regulations in order to earn the new credits -- versus retroactively -- that is, to prisoners who had no incentive to so conform their conduct.

Here, however, section 4019 merely adds to the number of conduct and work credits a prisoner can receive. Thus it can be applied prospectively and retroactively to prisoners who have already qualified for good conduct and work credits. The only question is how *many* credits they get. Accordingly, there is no rational basis to bar defendants who, like appellant, have already demonstrated the factual basis for an award of the additional credits by exhibiting good behavior while in pre-sentence custody.

In sum, *Rodriguez* contains serious analytic flaws, and should not be followed by this Court.

## CONCLUSION

For the reasons outlined above, appellant respectfully requests this Court to modify the judgment by adding 58 conduct credits, so that his credits total 238.

Dated: April 19, 2010

By:

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Candace Hale  
Counsel for Appellant  
Anthony Lee Caswell

CERTIFICATE OF COMPLIANCE/PROOF OF SERVICE BY MAIL

I declare that I am over eighteen years of age and not a party to this action. My business address is P.O. Box 775, San Anselmo, CA, 94979-0775 On the date set forth below I served the attached Appellant's Supplemental Opening Brief, consisting of 4,301 words, calculated in accordance with California Rules of Court, rule 8.360(b), on the persons listed below by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the United States mail at San Anselmo, California, addressed as listed below.

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Mr. Anthony L. Caswell G56090 Alder CC # 20 P. O. Box 906 Klamath, CA 95548	Violet Lee, Deputy. Attorney General 455 Golden Gate Avenue San Francisco CA 94102 (representing the People)
Lake County District Attorney 255 N. Forbes Street Lakeport CA 95453	Douglas Rhoades, Esq. P. O. Box 36 200 N. Main St Lakeport, CA 95453

I declare under penalty of perjury that the statements in this declaration are true and correct under the laws of California, and that this declaration was signed on April 19, 2010, in San Anselmo, California.

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CANDACE HALE