

FIRST DISTRICT APPELLATE PROJECT

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May 7, 2010

The Hon. Wallace P. Douglass
San Francisco Superior Court
Hall of Justice
850 Bryant Street
San Francisco, CA 94103

Re: **REQUEST FOR CORRECTION OF PRESENTENCE CREDITS**
People v. Shaleen Tindel, Court of Appeal No. A122864
San Francisco County Superior Court, No. SCN00203394

Dear Judge Wallace P. Douglass:

I am appointed appellate counsel for Shaleen Tindel in this case. Mr. Tindel's case is pending on appeal. I write because, in light of a January 25, 2010 amendment to Penal Code section 4019, I believe that the current calculation of Mr. Tindel's presentence credits is now incorrect and constitutes an unauthorized sentence. An error in a presentence credit award is an unauthorized sentence, which the superior court has jurisdiction to correct at any time. (See, e.g., *People v. Fares* (1993) 16 Cal.App.4th 954, 958; *People v. Clavel* (2002) 103 Cal.App.4th 516, 519, fn. 4; *People v. Jack* (1989) 213 Cal.App.3d 913, 916-918; *People v. Serrato* (1973) 9 Cal.3d 753, 763.) I therefore request that this Court correct the presentence credit calculation.

In this case, on September 15, 2008, Mr. Tindel was awarded 206 presentence conduct credits based on 412 actual days in custody. (See attached Abstract of Judgment.) However, on January 25, 2010, Penal Code section 4019 was amended to provide defendants, like Mr. Tindel, who have no serious or sex offense convictions "half-time" presentence credits. As a multitude of Divisions of the Court of Appeal have held, based on the rule of *In re Estrada* (1965) 63 Cal.2d 740, the amendment to section 4019 is applicable to defendants, like Mr. Tindel, whose convictions were not final on appeal on the date of the amendment. (*People v. Brown* (2010) 182 Cal.App.4th 1354; *People v. Landon* (April 13, 2010, No. A123779) __ Cal.App.4th __; *People v. House* (April 9, 2010, No. B212057) __ Cal.App.4th __; *People v. Norton* (May 5, 2010, No. A123659) __ Cal.App.4th __; *People v. Delgado* (April 29, 2010, No. B213271) __ Cal.App.4th __; *People v. Pelayo* (May 6, 2010, No. A123042) __ Cal.App.4th __.) A small minority of only two courts, none in the First District Court of Appeal, have found to the contrary.

(*People v. Otubuah* (May 6, 2010, No. E047271) __ Cal.App.4th __; *People v. Rodriguez* (Mar. 1, 2010, No. F057533) __ Cal.App.4th __.) Three division of the First District Court of Appeal have thus far found the section 4019 amendment applicable to all cases still pending on appeal on January 25, 2010. (See *Landon, Norton, and Pelayo, supra.*)

On behalf of Mr. Tindel, I urge this Court to follow the vast majority of the Courts of Appeal and all opinions issued in this District. I request that the Court order the abstract of judgment amended to provide him with **412 presentence conduct credits, which, when added to his 412 actual conduct days, amounts to 824 total presentence credits** and forward the amended abstract to the Department of Corrections If this Court makes this correction, please note that the amended minute order must also be sent to the Court of Appeal and the parties on appeal pursuant to Rule 8.340(a) at the following addresses: (1) Court of Appeal, First Appellate District, Division Two, 350 McAllister Street, San Francisco, CA 94102; (2) Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-3664; and (3) Tara Mulay, First District Appellate Project, 730 Harrison Street, Suite 201, San Francisco, CA 94107.

Thank you for your consideration of this request.

Sincerely yours,

TARA MULAY
Staff Attorney