

**S232900**

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**

**Plaintiff and Respondent,**

**v.**

**LAURA REYNOSO VALENZUELA,**

**Defendant and Appellant.**

Case No. S232900

Fourth Appellate District, Division One, Case No. D066907  
Imperial County Superior Court, Case No. JCF32712  
The Honorable Christopher J. Plourd, Judge

**ANSWER BRIEF ON MERITS**

**SUPREME COURT  
FILED**

**SEP 27 2016**

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## ISSUE PRESENTED

Was it the intent of the voters who passed Proposition 47 that California Penal Code<sup>1</sup> section 1170.18 have retroactive effect and thus preclude the imposition of section 667.5, subdivision (b) prior prison term enhancements at the time of resentencing in cases where the prior was reduced to a misdemeanor?

## INTRODUCTION

Appellant Laura Reynoso Valenzuela was convicted of receiving stolen property in 2012 and served a prison term for the offense. That felony conviction and resulting prison term were the basis for a one-year prior prison term enhancement imposed at sentencing in 2014 in the instant case. After sentencing, the voters enacted Proposition 47. Pursuant to its terms, appellant petitioned for the reduction of her 2012 conviction to a misdemeanor. The petition was granted.

Now, appellant argues she is entitled to additional relief. She contends the reduction of her 2012 felony conviction to a misdemeanor necessarily invalidates her one-year prior prison term enhancement in the current case because the underlying conviction is no longer a felony. Because all of the elements of the prison prior were met at the time appellant was sentenced, the enhancement was lawful and valid. Nothing in Proposition 47 indicates an intent to extend this additional remedy to appellant, or other defendants like her.

Appellant also contends that a portion of Proposition 47 that declares the reduced crimes will be “misdemeanors for all purposes,” section

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

1170.18, subdivision (k),<sup>2</sup> should be retroactively applied to her enhancement so that the enhancement may not stand. But statutes are presumed to be prospective, not retroactive, and nothing in the language or history of Proposition 47 indicates that voters intended subdivision (k) to operate retroactively in this manner.

Finally, the prospective application of subdivision (k) does not violate appellant's right to equal protection, and nothing in Proposition 47 requires a remand for the trial court to exercise its discretion under section 1385 whether to strike a prior prison term enhancement.

### STATEMENT OF THE CASE

On October 1, 2012, in case number JCF28616, appellant was convicted of receiving stolen property under section 496 (hereafter referred to as the "2012 conviction"). (1 CT 42,<sup>3</sup> 209-221; 13 RT 803.)

On September 23, 2014, in case number JCF32712, an Imperial County jury found appellant guilty of carjacking (§ 215, subd. (a); count 1), reckless evasion of a peace officer (Veh. Code, § 2800.2, subd. (a); count 2), and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a); count 3). (1 CT 39-41; 156-159, 165-167.) The next day, appellant waived her right to a jury trial regarding two bifurcated prior prison term enhancement allegations (§ 667.5, subd. (b)), and the trial court found one of those alleged prior prison term enhancements, based on the 2012 conviction, to be true. (1 CT 40-42, 207-208; 6 RT 135-136.)

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<sup>2</sup> Section 1170.18, subdivision (k), is hereinafter referred to as "subdivision (k)."

<sup>3</sup> It appears that the date of this conviction was mistakenly and inconsequentially listed as October 1, 2010, in the first amended information. (CT 42.)

On October 24, 2014, the trial court imposed a total term of six years eight months in state prison, including a one-year consecutive term for the prior prison term enhancement. (2 CT 276, 282-284.)

On November 4, 2014, the voters approved Proposition 47, the “Safe Neighborhoods and Schools Act.” (*People v. Morales* (2016) 63 Cal.4th 399, 404.) It went into effect on November 5, 2014. (*People v. Diaz* (2015) 238 Cal.App.4th 1323, 1328.) Proposition 47 reduced certain drug and theft-related felonies and wobblers to misdemeanors, unless the defendant who committed the crime was ineligible. (*People v. Morales, supra*, 63 Cal.4th at p. 404.) An eligible defendant currently serving a felony sentence for a Proposition 47 qualifying crime had to file a petition for recall of sentence under section 1170.18, subdivision (a), to have the crime reduced to a misdemeanor, and an eligible person who had completed a felony sentence for a Proposition 47 qualifying crime had to file an application to have that crime reduced to a misdemeanor. (*People v. Diaz, supra*, 238 Cal.App.4th at pp. 1328-1329; *People v. Shabazz* (2015) 237 Cal.App.4th 303, 310-311.) One of the theft-related crimes reducible to a misdemeanor under Proposition 47 is receiving stolen property under section 496, so long as the value of the stolen property does not exceed \$950. (*Id.* at pp. 303, 307, 309.)

On November 17, 2014, appellant filed a petition for recall of sentence under section 1170.18, subdivision (a), in the 2012 case. (Supp. CT 1-2.) On December 4, 2014, the trial court granted the petition in that case, reduced the receiving stolen property conviction to a misdemeanor, and gave appellant credit for time served. (Supp. CT 7, 10; Reporters Augmented Transcript (RAT) [Dec. 4, 2014] 4-5.) On appeal, appellant argued the trial court should have also resentenced her on the 2014 case because it included a one-year term for her 2012 prior prison term

enhancement, which no longer qualified as a prior prison term because it was no longer a felony.

On February 3, 2016, the Fourth District Court of Appeal, Division One, rejected appellant's argument and found that when appellant was sentenced in the 2014 case, the 2012 conviction underlying the prior prison term enhancement was still a felony. The court held that nothing in the language of Proposition 47, and in particular nothing in the language of subdivision (k), provided any procedure for striking a prior prison term enhancement if the felony underlying the enhancement was subsequently reduced to a misdemeanor. (D066907; Slip. opn. at pp. 21-24.) The court also stated that, as respondent had pointed out, prior prison term enhancements were based on a defendant's status as a recidivist, and not on the underlying criminal conduct. (Slip. opn. at p. 24.) Finally, the court held that appellant's equal protection claim had no merit. (Slip. opn. at pp. 24-25.)

Appellant petitioned for review, and this court granted her petition.

## ARGUMENT

### **I. WHEN A PRIOR PRISON TERM ENHANCEMENT IS IMPOSED BEFORE ITS UNDERLYING FELONY IS REDUCED TO A MISDEMEANOR, THAT ENHANCEMENT CANNOT BE RETROACTIVELY STRICKEN UNDER PROPOSITION 47**

Appellant asserts she is eligible for Proposition 47 resentencing on her prior prison term enhancement after the trial court reclassified the underlying felony to a misdemeanor under Proposition 47. (OBM<sup>4</sup> 5.) This court should reject that argument. When a prior prison term enhancement is imposed before its underlying felony is reduced to a misdemeanor, that enhancement cannot be retroactively stricken under Proposition 47. This

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<sup>4</sup> "OBM" refers to appellant's opening brief on the merits.

conclusion is consistent with the express language of Proposition 47 and the general presumption of prospective application and comports with the declared purpose of Proposition 47.

**A. Overview of Proposition 47**

Under section 1170.18, subdivision (a), a person “currently serving” a felony sentence for an offense that is eligible for reduction to a misdemeanor under Proposition 47 may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (*People v. Morales, supra*, 63 Cal.4th at p. 404; *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1092.) Under section 1170.18, subdivision (b), if the court finds that the person meets the criteria in section 1170.18, subdivision (a), it must recall the sentence and resentence the person to a misdemeanor unless the court determines, in its discretion, that resentencing the petitioner would pose an unreasonable risk of danger to public safety. (*People v. Morales, supra*, 63 Cal.4th at p. 404; *People v. Rivera, supra*, 233 Cal.App.4th at p. 1092.) Alternatively, under section 1170.18, subdivision (f), if a person has completed a felony sentence for an offense eligible for reduction to a misdemeanor under Proposition 47, he or she must file an application to have the felony reduced to a misdemeanor. (*People v. Shabazz, supra*, 237 Cal.App.4th at p. 310.) Under section 1170.18, subdivision (g), if the application satisfies the criteria in section 1170.18, subdivision (f), the court must reduce the felony to a misdemeanor. (*Id.* at pp. 310-311.) Trial courts have no discretion to deny applications as they do with petitions for defendants who are currently serving a sentence.

With the exception of the right to own or possess firearms, “[a]ny felony conviction that is recalled and resented under subdivision (b) or designated a misdemeanor under subdivision (g) shall be considered a

misdemeanor for all purposes.” (§ 1170.18, subd. (k); *People v. Diaz*, *supra*, 238 Cal.App.4th at p. 1329.)

### **B. Overview of Prior Prison Term Enhancements**

The Legislature enacted section 667.5 as part of the Determinate Sentencing Act of 1976, and it became effective on July 1, 1977. (*People v. Baird* (1995) 12 Cal.4th 126, 130.) Section 667.5, subdivision (b), provides for an enhancement of one year for any sentence to state prison or, under section 1170, subdivision (h), “for each prior separate prison term or county jail term imposed under subdivision (h) of section 1170 or when sentence is not suspended for any felony. . . .” (§ 667.5, subd. (b).) “Imposition of a sentence enhancement under Penal Code section 667.5[(b)] requires proof that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed that term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction.” (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) Once the prior prison term is found true within the meaning of section 667.5, subdivision (b), it cannot be stayed and the one-year enhancement is mandatory unless stricken. (*People v. Langston* (2004) 33 Cal.4th 1237, 1241.) A prior prison term enhancement may be stricken under section 1385, subdivision (a). (*People v. Bonnetta* (2009) 46 Cal.4th 143, 145; *People v. Garcia* (2008) 167 Cal.App.4th 1550, 1561.)

### **C. Interpretation of Ballot Initiatives**

Issues of statutory interpretation are reviewed de novo. (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.) The interpretation of a ballot initiative is governed by the same rules that apply in construing a statute enacted by the Legislature. (*People v. Morales*, *supra*, 63 Cal.4th at p. 135.) First, the language of the statute is given its ordinary and plain meaning.

(*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 901.) Second, the statutory language is construed in the context of the statute as a whole and within the overall statutory scheme to effectuate the voters' intent. (*Ibid.*) A construction that most closely comports with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, should be selected, and an interpretation that would lead to absurd results should be avoided. (*People v. Rubalcava* (2000) 23 Cal.4th 322, 328.) If a provision is included in one part of a statute, but excluded from another, a court should not imply the omitted provision in the part of the statute that does not contain it. (*People v. Gardeley* (1996) 14 Cal.4th 605, 621-622, disapproved on other grounds in *People v. Sanchez* (2016) 63 Cal.4th 665, 686, fn. 13.) Where the language is ambiguous, the court will look to "other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet." (*Robert L.*, *supra*, at p. 900; *People v. Floyd* (2003) 31 Cal.4th 179, 187-188 [ballot pamphlet information is a valuable aid in construing the intent of voters].) Ultimately, the court's duty is to interpret and apply the language of the initiative "so as to effectuate the electorate's intent." (*Robert L.*, at p. 900.)

**D. Proposition 47 Does Not Operate to Invalidate Appellant's Previously Imposed Prior Prison Term Enhancement**

Appellant argues that because Proposition 47 reduced her 2012 conviction to a misdemeanor, the prior prison term enhancement imposed in 2014 is no longer valid because the required element of a felony conviction no longer exists. (OBM 6-9, 17, 24.) Further, she argues subdivision (k) should apply retroactively because: (1) it is an amendatory statute lessening punishment; (2) her judgment is not yet final, and; (3) retroactive application is consistent with the voters' intent. (OBM 5, 9-25.)

Appellant's first argument should be rejected because the plain language of Proposition 47 does not include provisions warranting relief in the circumstances of this case—i.e., where the sentence enhancement was imposed *before* the underlying felony was reduced to a misdemeanor, and because the enhancement was lawfully and validly imposed at the time of sentencing. Appellant's retroactivity argument should be rejected because nothing in the history or language of Proposition 47 indicates an intent to rebut the presumption of prospective application that applies to subdivision (k) of the newly enacted statute.

**1. Because appellant's 2012 conviction was still a felony when the prior prison term enhancement was imposed, the enhancement is valid and lawful**

Appellant's first argument can be disposed of quickly. She argues the elements of her prior prison term are no longer met under section 667.5, subdivision (b), because her 2012 conviction is no longer a felony. Because her 2012 conviction was a felony when the court imposed the enhancement, the enhancement was lawful and valid.

As noted, to impose an enhancement for a prior prison term pursuant to section 667.5, subdivision (b), the trial court must find that the defendant meets the following four criteria: 1) she was previously convicted of a felony, 2) she was imprisoned for that conviction, 3) she completed a term of imprisonment therefor, and 4) she did not remain free from custody and the commission of a new felony offense for five years. (*People v. Tenner, supra*, 6 Cal.4th at p. 563.) Appellant's prior prison term enhancement was imposed on October 24, 2014, and the underlying 2012 felony to that enhancement was reduced to a misdemeanor on December 4, 2014, following enactment of Proposition 47 on November 4, 2014.

There is no dispute that, at the time the trial court imposed the one-year enhancement for appellant's prior prison term, she met all four of the



necessary qualifications for imposition of a sentence enhancement under section 667.5, subdivision (b). Because the sentence was lawfully imposed at the time of the hearing, the trial court had no authority to resentence appellant on the 2014 case unless such authority is included in Proposition 47. “Under the general common law rule, a trial court is deprived of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced.” (*People v. Karaman* (1992) 4 Cal.4th 335, 344.) Accordingly, appellant’s argument that by its plain terms, section 667.5, subdivision (b), is inapplicable, mischaracterizes the pertinent issue. Section 667.5, subdivision (b), was plainly applicable at the time appellant’s 2014 sentence was imposed. If the enhancement must now be undone, it is not because section 667.5, subdivision (b), is inapplicable, but rather because Proposition 47 was subsequently enacted and requires resentencing appellant on an enhancement which was, by all accounts, valid and lawful at the time it was imposed in October 2014. As explained below, Proposition 47 includes no such requirement and should not be read to require striking a previously lawfully imposed prison prior enhancement.

The timing of what occurred here is critical and the cases bear that out. For example, because this case deals with the retroactive and *not* prospective application of subdivision (k) appellant’s reliance on *People v. Abdallah* (2016) 246 Cal.App.4th 736 is misplaced. (OBM 18-20.) In that case, unlike this case, the Court of Appeal struck a prior prison term enhancement imposed by the trial court because the prison prior sentence was imposed *after* the underlying conviction had been reduced to a misdemeanor. (*Id.* at pp. 739-748.) Indeed, the *Abdallah* court expressly distinguished its case on that basis from cases published at that time where the prior prison term enhancement was imposed at sentencing *before* the underlying felony was reduced to a misdemeanor. (*Id.* at pp. 746-747.) Thus, *Abdallah* is distinguishable from the present case.

Similarly, appellant's reliance on *People v. Park* (2013) 56 Cal.4th 782 and *People v. Flores* (1979) 92 Cal.App.3d 461 fails to appreciate the legal significance of the sequence of events. Appellant argues that interpreting the phrase "for all purposes" in subdivision (k) to include striking sentencing enhancements such as section 667.5, subdivision (b), where the underlying conviction is no longer a felony, is consistent with this court's reasoning in *People v. Park, supra*, 56 Cal.4th at page 799 ["we conclude that when a wobbler has been reduced to a misdemeanor the prior conviction does not constitute a prior felony conviction with the meaning of section 667(a)"].) (OBM 23-25.)

In *Park*, the defendant's sentence for his current crimes was enhanced by five years under section 667, subdivision (a), based on his prior conviction of a serious felony. *Prior* to the defendant's commission of his current crimes, however, the trial court had reduced the prior offense to a misdemeanor under section 17, subdivision (b)(3), and then dismissed it pursuant to section 1203.4, subdivision (a)(1). (*People v. Park, supra*, 56 Cal.4th at p. 787.) *Park* concluded that once the conviction had been reduced to a misdemeanor, it could no longer serve as the basis for the enhancement under section 667, subdivision (a). (*Id.* at pp. 787, 799.) The court noted, however, that "there is no dispute that . . . defendant would be subject to the section 667 (a) enhancement had he committed and been convicted of the present crimes *before* the court reduced the earlier offense to a misdemeanor." (*Id.* at p. 802.)

Like *Abdallah*, *Park* is distinguishable from the present case because the reduction and dismissal of the prior conviction occurred before the defendant's commission of her current crimes and thus, before use of the prior conviction to enhance his sentence. Indeed, under the logic of *Park*, because appellant's 2012 conviction for receiving stolen property was still a felony when she was sentenced on October 24, 2014, the conviction

properly served as the basis for the trial court's imposition of a one-year prison prior enhancement. Thus, appellant's reliance on *Park* is misplaced.

Appellant also argues that the phrase "for all purposes" in subdivision (k) is equivalent to the specific statutory restriction against the use of a past marijuana conviction in *People v. Flores, supra*, 92 Cal.App.3d 461. (OBM 22-23.) In *Flores*, the Legislature reduced the crime of marijuana possession, which served as the basis for the defendant's prior prison term enhancement, to a misdemeanor *before* the defendant committed, and was convicted, of the later offense that was the subject of appeal. (*People v. Flores, supra*, 92 Cal.App.3d at pp. 464, 470.) In *Flores*, as in *Park* and *Abdallah*, the current offense was committed *after* the earlier offense had already been reduced to a misdemeanor, in contrast with the present case. Here, as stated above, the 2012 conviction for receiving stolen property was still a felony when appellant was sentenced on the one-year prior prison term enhancement on October 24, 2014. Thus, as with *Park* and *Abdallah*, appellant's reliance on *Flores* is misplaced.

As explained above, the sequence of events is critical to the analysis. When sentence was imposed in appellant's 2014 case, the requirements of section 667.5, subdivision (b), were met. The fact that her 2012 felony conviction has since been reduced to a misdemeanor does not alter the lawful imposition of her sentence in 2014 unless the voters, in passing Proposition 47, intended the reduction of her 2012 conviction to a misdemeanor to also operate to require resentencing in her 2014 case. The voters could have signaled this intent by making subdivision (k) retroactive since that would necessarily call for application of subdivision (k)'s "misdemeanor for all purposes" language to past events. But, as explained

below, the voters had no such intention and expressed no desire that subdivision (k) operate retroactively.

**2. The voters did not intend for subdivision (k) to operate retroactively**

No part of the Penal Code is retroactive unless expressly so declared. (§ 3.) Section 3 establishes a strong presumption of prospective operation and codifies a principle that absent an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature [or electorate] must have intended a retroactive application. (*People v. Brown* (2012) 54 Cal.4th 314, 324.) A statute that is ambiguous with respect to retroactive application is construed to be unambiguously prospective. (*Ibid.*)

Subdivision (k) states:

Any felony conviction that is recalled and resentenced under subdivision (b) or designated a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that such resentencing shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

Nothing in the plain language of subdivision (k) speaks to retroactive application. There is no express retroactivity provision in subdivision (k). It states, as noted, that a felony reduced to a misdemeanor under subdivision (b) or (g) is a misdemeanor for all purposes, without ever stating whether the misdemeanor for all purposes language can be applied retroactively. Thus, nothing in the plain language of subdivision (k) rebuts the presumption under section 3 that the statute operates prospectively, not retroactively.

In an attempt to rebut this presumption, appellant relies on *In re Estrada* (1965) 63 Cal.2d 740. (OBM 9-11.) In *Estrada*, the court concluded that where the Legislature (or electorate) amends a statute to

reduce the punishment for a particular criminal offense, it is assumed, absent a savings clause or contrary evidence of legislative (or voter) intent, that the Legislature (or electorate) intended the amended statute apply to all defendants whose judgments are not yet final on the statute's operative date. (*People v. Conley* (2016) 63 Cal.4th 646, 656-657; *Brown, supra*, 54 Cal.4th at p. 323; *People v. Nasalga* (1996) 12 Cal.4th 784, 793; *In re Estrada, supra*, 63 Cal.2d at pp. 742-748.) The statute at issue in *Estrada* was silent on the issue of retroactivity. The court drew the inference that the Legislature must have intended retroactive application of the reduced punishment because, “there is ordinarily no reason to continue imposing the more severe penalty, beyond simply ‘satisfy[ing] a desire for vengeance.’” (*People v. Conley, supra*, 63 Cal.4th at p. 656, citing *In re Estrada, supra*, 63 Cal.2d at p. 745.) But, the *Estrada* court itself recognized that the Legislature could have selected prospective or retroactive application— “either ... would have been legal and constitutional.” (*In re Estrada, supra*, 63 Cal.2d at p. 744.) *Estrada* does not weaken or modify the default rule of prospective operation in section 3, but instead articulates a tool to discern contrary intent, i.e., the reasonable presumption that a legislative act mitigating punishment for a crime is intended to apply to all non-final judgments. (*People v. Brown, supra*, 54 Cal.4th at p. 324; *People v. Conley, supra*, 63 Cal.4th 656.)

This court has recognized *Estrada's* “limited role” in the “jurisprudence of prospective versus retrospective operation,” and has warned that “[a]pply[ing] broadly and literally, *Estrada's* remarks about section 3 would ... endanger the default rule of prospective operation.” (*People v. Brown, supra*, 54 Cal.4th at p. 324.) Relying on *Estrada* here to find subdivision (k) retroactive would constitute the very expansion of *Estrada* of which this court warned in *Brown*.

At the outset, *Estrada* does not apply in this case because the felony judgment underlying the prior prison term enhancement is presumed to be final because it occurred in 2012 and there is no record that appellant ever appealed that judgment. A judgment becomes final when the availability of an appeal and the time for filing a petition for certiorari has expired. (*People v. Kemp* (1974) 10 Cal.3d 611, 614.) Appellant asserts that *Estrada* applies because her *current* case, number JCF32712, is still on appeal. (OBM 9-11.) Appellant, however, looks to the finality of the wrong case. *Estrada* applies to a particular judgment so that if the penalty is lessened for a crime before it is final, the defendant receives the benefit of that reduction in penalty. So, there had to be a lesser penalty for receiving stolen property in the 2012 case before the judgment was final in that case for *Estrada* to apply. Put another way, the judgment in the 2012 case was reduced to a misdemeanor under Proposition 47 *after* the judgment in that case was final, and there is no authority for *Estrada* being used to reach past a final judgment in one case and into a judgment in a subsequent case.

The presumption of retroactivity established in *Estrada* also does not apply to subdivision (k) because it does not constitute mitigation of a penalty for a specific crime. In *Brown*, the defendant was sentenced and committed to prison in 2007 and awarded two days of conduct credit under section 4019 for every four days spent in local custody. (*People v. Brown, supra*, 54 Cal.4th at p. 318.) The Court of Appeal affirmed the defendant's conviction on January 13, 2010. (*Ibid.*) A new version of section 4019 became operative on January 25, 2010, which increased conduct credits to two days for every two days spent in local custody. (*Id.* at p. 318.) On January 29, 2010, the defendant filed a petition for rehearing claiming additional conduct credits under the newly effective section 4019. (*Id.* at pp. 318-319.) The Court of Appeal granted the petition, vacated its

decision, and in a new decision, retroactively awarded the defendant additional conduct credits. (*Id.* at p. 319.) This court granted review to decide whether the version of section 4019 effective on January 25, 2010, retroactively benefitted prisoners who served time in local custody before that effective date.<sup>5</sup> (*People v. Brown, supra*, 54 Cal.4th at p. 317.)

This court first interpreted the language of section 4019 effective January 25, 2010, as operating prospectively. (*Id.* at pp. 319-323.) This court then analyzed *Estrada* and noted that the *Estrada* rule was based on the premise that “[a] legislative mitigation of the penalty of a particular crime represents a legislative judgment that the lesser penalty or the different treatment is sufficient to meet the legitimate ends of the criminal law” (citation omitted), and the corollary inference that the Legislature intended the lesser penalty to crimes already committed. (*Id.* at p. 325, italics in original.) This court found that *Estrada* did not apply to section 4019 effective on January 25, 2010, because it did not alter the penalty for any crime; a prisoner who earns no conduct credits serves the full sentence originally imposed. (*Ibid.*) This court further reasoned that instead of addressing punishment for past criminal conduct, the statute addressed *future conduct* in a custodial setting by providing increased incentives for good behavior. (*Ibid.*) Having concluded, among other things, that the language of the statute was prospective, and that *Estrada* did not apply, this court held the statute only applied prospectively. (*Id.* at p. 318.)

Analogous to the statute in *Brown*, the language of subdivision (k) does not mitigate the punishment for any particular crime; it only states that

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<sup>5</sup> The relevant language of section 4019 effective on January 25, 2010, provided: “It is the intent of the Legislature that 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.” (*Brown, supra*, 54 Cal.4th at p. 318, fn. 5.)