CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,	
Plaintiff and Respondent,	E034238
v.	(Super.Ct.No. FVI015746)
DAVE EDWARD PHILPOT,	**ORDER MODIFYING OPINION** [NO CHANGE IN JUDGMENT] **AND DENIAL OF PETITION FOR REHEARING**
Defendant and Appellant.	

Plaintiff and Respondent's petition for rehearing is denied. The opinion filed in this matter on August 27, 2004, is modified as follows:

1.   On page 18, beginning with the last sentence of the first paragraph, it is modified to read as follows:

"credit). Presentence conduct credits may not be used, however, to reduce either a minimum term of 25 years or a maximum term of life. (*People v. Carpenter* (1979) 99

Cal.App.3d 527, 535-536; § 3046.)[1] Accordingly, we conclude that after defendant has

served the minimum term, the Board of Prison Terms may use defendant's section 4019

credits in determining defendant's release date. (*Carpenter* at pp. 535-536.)

Thus, even if defendant's sentence is solely an indeterminate term, he is entitled to

an award of section 4019 conduct credits. The abstract of judgment should therefore be

modified accordingly."

Except for these modifications, the opinion remains unchanged. This modification

does not effect a change in the judgment.

CERTIFIED FOR PUBLICATION

<div align="right">

s/Richli
J.
</div>

We concur:

s/Ramirez
P. J.

s/King
J.

---

   1 Section 3046 states in pertinent part: "(a) No prisoner imprisoned under a life
sentence may be paroled until he or she has served the greater of the following: [¶] (1) A
term of at least seven calendar years. [¶] (2) A term as established pursuant to any other
provision of law that establishes a minimum term or minimum period of confinement
under a life sentence before eligibility for parole."