Filed 6/20/03

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re PAMELA C. MARTINEZ on Habeas Corpus

The modification filed in the above entitled matter on June 18, 2003, is corrected nunc pro tunc to read as follows:

In re PAMELA C. MARTINEZ,	)	S103581
	)	Ct.App. 2/7 B150882
on Habeas Corpus.	)	
	)	Los Angeles County
	)	Super.Ct. No. YA023049
	)	MODIFICATION OF OPINION

THE COURT:

The opinion in this case, reported at 30 Cal.4th 29, is modified as follows:

1. In the third complete paragraph on page 32, the phrase "20 percent" is deleted.

2. In the paragraph beginning on page 34 and extending to page 35, the second through sixth sentences are modified to read as follows: Petitioner's argument focuses on the disadvantage (through reduced conduct credit) that she suffers by having her phase II time deemed postsentence time. It is not self-evident, however, that postsentence status is an inherent disability. Whether a petitioner fares better "presentence" or "postsentence" will vary, depending on the

nature of the commitment offense and the petitioner's history. A nonviolent offender may receive a credit up to 50 percent of her actual presentence confinement. (§ 4019.) If she has no prior strikes, she may earn 100 percent credit postsentence (one day of conduct credit for each day actually served) (§ 2933, subd. (a)), whereas a recidivist with a prior strike may earn postsentence credits only up to 20 percent of the total prison sentence (§§ 667, subd. (c)(5); 1170.12, subd. (a)(5)), and an offender with two prior strikes is denied *any* postsentence conduct credit. (*In re Cervera* (2001) 24 Cal.4th 1073, 1076.)

3. In the second complete paragraph on page 36, the second through fourth sentences are modified to read as follows: Suppose a jury convicts two defendants, each of whom has a prior strike, of the same first degree burglary (§§ 458, 460), and imposes the upper base term of six years (§ 461) on each. If there are no errors with A's trial, his first four years of postsentence custody will yield A *one year* of conduct credit. (§§ 667, subd. (c)(5), 1170.12, subd. (a)(5).) By contrast, if, after the same four-year period, a reviewing court finds the trial court improperly denied B's motion for self-representation, petitioner's theory would grant B two years of credit for this time (§ 4019), even though the exact same evidence was presented against each codefendant.

4. In the second complete paragraph on page 37, the second through fourth sentences are modified to read as follows: She was sentenced initially as a third striker, which would have rendered her ineligible to earn any postsentence conduct credits, as in *James*, *supra*, 38 Cal.2d 302. She ultimately pleaded guilty as a second striker, eligible to earn postsentence conduct credit up to 20 percent of the total prison sentence. Because we follow petitioner's ultimate phase IV status, we conclude that during her phase II confinement, she was entitled to earn credits under the 20 percent formula described above.

5. In the third complete paragraph on page 37, the final sentence is modified to read as follows: Petitioner pleaded guilty as having one prior strike, and she thus is entitled, for her phase II confinement, to a maximum conduct credit of 20 percent of her total prison sentence.

6. The fourth complete paragraph on page 37 is modified to read as follows: We therefore reverse the judgment of the Court of Appeal. The matter is remanded to the Court of Appeal with instructions to direct the trial court to sentence petitioner in accordance with the April 17, 2001 sentencing. The trial court should clarify the date on which petitioner's custody commenced. Calculation of the actual days of conduct credit earned by petitioner during her phase II and phase IV confinements should be left to prison authorities. (See *Buckhalter*, *supra*, 26 Cal.4th at pp. 30-31, 40-41.)