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IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA

SUPREME COURT  
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Penalty

_____	) NO. _____
PEOPLE OF THE STATE OF CALIFORNIA,	) Appeal No. G036562
	) Orange Co. No.
Plaintiff and Respondent,	) 04NF2414
	)
vs.	)
	)
JAMES EDWARD DUFF, JR.,	)
	)
Defendant and Appellant.	)
_____	)

Appeal from the Superior Court of Orange County  
Honorable James A. Stotler

**PETITION FOR REVIEW**

TONJA R. TORRES, ESQ. (State Bar 143578)  
TORRES & TORRES  
PMB 332  
3579 East Foothill Boulevard  
Pasadena, California 91107  
(626) 836-5855  
Attorney for Defendant and Petitioner  
JAMES EDWARD DUFF, JR.

By appointment of the Court of Appeal  
under the Appellate Defenders, Inc.  
independent case system

IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA

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**PETITION FOR REVIEW**

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Defendant and petitioner James Edward Duff, Jr. hereby petitions this court for review of that part of the *published* opinion of the Court of Appeal, Fourth Appellate District, Division Three, filed May 31, 2007, in which the court held that the language of Penal Code section 2933.2, subdivision (a), precludes the awarding of presentence conduct credits to any person convicted of murder, even where the trial court has stayed the

defendant's murder conviction pursuant to Penal Code section 654. The Court of Appeal's opinion is attached as an appendix.

Review is necessary to settle important questions of law. Petitioner respectfully requests that review be granted to him.

Dated: June 15, 2007

**TORRES & TORRES**

A handwritten signature in cursive script, appearing to read "Tonja R. Torres".

TONJA R. TORRES  
Attorney for Defendant and  
Petitioner James Edward Duff, Jr.



## **MEMORANDUM IN SUPPORT OF THE PETITION**

### **STATEMENT OF THE ISSUES**

1. Did the appellate court err when it held that *In re Phelon* (2005) 132 Cal.App.4<sup>th</sup> 1214 was wrongly decided, and that petitioner was not entitled to presentence conduct credits for his conviction of assault on a child likely to cause great bodily injury resulting in death, even though his conviction for second degree murder was stayed pursuant to Penal Code section 654?

## STATEMENT OF THE CASE

On February 28, 2005, petitioner, James Edward Duff, Jr., was charged by information in connection with an incident involving his son that took place on July 3, 2004. Count 1 charged petitioner with murder in violation of Penal Code section 187, subdivision (a). Count 2 charged petitioner with assault on a child with force likely to produce great bodily injury, resulting in death, in violation of Penal Code section 273ab. (CT1 112.)

On November 7, 2005, after a jury trial, petitioner was convicted of both counts. (CT1 263-264, 280-281.)

On January 20, 2006, the trial court imposed an indeterminate term of 15 years to life as to count 1, but then stayed the term pursuant to Penal Code section 654. As to count 2, the trial court imposed the indeterminate term of 25 years to life. (CT2 316-317.)

Additionally, the trial court ordered petitioner to submit to DNA testing pursuant to Penal Code section 296. Further, the trial court imposed a \$1000 state restitution fine pursuant to Penal Code section 1202.4, subdivision (b), and imposed and stayed a \$1000 parole revocation fine pursuant to Penal Code section 1202.45. Actual restitution was imposed in the amount of \$4,019.26, payable to the Victim Compensation and

Government Claims Board. Finally, the trial court imposed a \$20 security fee pursuant to Penal Code section 1465.8. (CT2 317.)

Petitioner received credit for time actual time served in the amount of 567 actual days. (CT2 317.)

On January 24, 2006, petitioner timely filed a notice of appeal. (CT2 321.)

On May 31, 2007, the Court of Appeal affirmed the judgment and sentence as to petitioner. (Appendix.)

## **STATEMENT OF FACTS**

Petitioner concurs with the Court of Appeal that, given the limited nature of the issue petitioner has raised on appeal, the facts of the case need not be detailed herein. (Opinion, p. 2.)

## ARGUMENT

### I.

#### **THE APPELLATE COURT ERRED WHEN IT DETERMINED THAT PETITIONER WAS NOT ENTITLED TO PRESENTENCE CONDUCT CREDITS.**

##### **A. Introduction.**

In its May 31, 2007, opinion, the Court of Appeal held:

“The language of [Penal Code] section 2933.2, subdivision (a) is ...broad and clear, and we believe it evinces an intent to preclude presentence conduct credits to anyone convicted of murder, even if that sentence is stayed pursuant to [Penal Code] section 654.”

(Opinion, p. 6.) However, this holding is contrary to another Court of Appeal decision -- *In re Phelon* (2005) 132 Cal.App.4<sup>th</sup> 1214 (“*Phelon*”), a case the appellate court determined was wrongly decided. (Opinion, p. 4.)

Contrary to the appellate court’s opinion in the instant case, petitioner’s murder conviction should not preclude the award of any presentence conduct credits against the sentence he is now serving for violation of Penal Code section 273ab. Rather, because petitioner’s sentence for second degree murder was stayed pursuant to Penal Code section 654, his presentence conduct credits should not be limited under Penal Code section 2933.2. Because there is a conflict between *Phelon* and the appellate court’s published opinion in the instant case, this court should

grant review and, further, order that petitioner was entitled to accrue presentence conduct credits under Penal Code section 2933.1.

**B. A Conviction Of Penal Code Section 273ab Qualifies As A Violent Felony For Purposes Of Penal Code Section 2933.1, Thus Entitling Petitioner To Presentence Conduct Credits.**

Because Penal Code section 273ab is punishable by an indeterminate term of 25 years to life, it constitutes a violent felony within the meaning of Penal Code section 667.5, subdivision (c)(7), which states in relevant part:

“For the purpose of this section, ‘violent felony’ shall mean any of the following: ... (7) Any felony punishable to death or imprisonment in the state prison for life.”

Thus, petitioner should have received presentence conduct credits pursuant to Penal Code section 2933.1, which provides that “any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit... .” (Pen. Code § 2933.1, subd. (a).)

Petitioner received credit for 567 actual days of custody. (CT2 317.)

Had he accrued presentence conduct credits at the rate of 15% pursuant to Penal Code section 2933.1, he would have received 85 days in conduct credits, for a total of 652 days of presentence credits.

**C. Penal Code Section 654 Prohibits The Use Of A Conviction For Punitive Purposes Where The Trial Court Stays Sentence On That Conviction.**

Penal Code section 2933.2, subdivision (c) prohibits the award of presentence conduct credits to “any person specified in subdivision (a).”

Penal Code section 2933.2, subdivision (a) applies to “any person who is convicted of murder, as defined in Section 187.”

Past courts have interpreted Penal Code section 2933.2, subdivisions (a) and (c) to mean that the credit preclusion set forth there applies to the offender, and not to the offense itself, thereby limiting a convicted murderer’s conduct credits regardless of whether or not all of his offenses were murder, and regardless of whether those other offenses resulted in determinate or indeterminate sentences. (See *People v. Wheeler* (2003) 105 Cal.App.4<sup>th</sup> 1423, 1432 [defendant was convicted of first degree murder, attempted voluntary manslaughter, and discharge of a firearm at an inhabited dwelling]; *People v. McNamee* (2002) 96 Cal.App.4<sup>th</sup> 66, 70-74 [defendant was convicted of second degree murder and received a firearm enhancement that resulted in a consecutive determinate term]; *People v. Herrera* (2001) 88 Cal.App.4<sup>th</sup> 1353, 1366-1367 [defendants were convicted of murder, attempted murder and associated enhancements for firearms and gangs].) However, the foregoing cases do not apply here.

Unlike the instant case, none of the foregoing cases involved a murder sentence stayed pursuant to Penal Code section 654. Here, the trial court stayed execution of sentence on petitioner's conviction for second-degree murder pursuant to Penal Code section 654, which states in relevant part as follows:

“An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision....”

(Pen. Code, § 654, subdivision (a).)

**1. The *Phelon* decision.**

*In re Phelon, supra*, 132 Cal.App.4<sup>th</sup> at 1219-1222, involved the analysis of the interaction between a statute analogous to Penal Code section 2933.2 – Penal Code section 2933.1 – and Penal Code section 654. The *Phelon* court held that the defendant's “presentence credits should not be limited under [Penal Code] section 2933.1(c) based on convictions on which punishment was stayed under [Penal Code] section 654.” (*Id.* at p. 1221.)

According to the *Phelon* court:

“‘[S]ection 654 prohibits the use of a conviction for any punitive purpose if the sentence on that conviction is stayed.’ [Citation.] Section 654 prohibits a ‘defendant from being disadvantaged in any way as a result of the stayed convictions.’ [Citation.] Under this principle, it has been held that sentences for convictions that were



stayed under section 654 may not be used as a basis for future enhancement in the absence of specific statutory authorization. [Citation.] Likewise, a prior prison term enhancement may not be imposed for an offense for which the prior term was stayed under section 654. [Citation.]”

(*In re Phelon, supra*, 132 Cal.App.4<sup>th</sup> at pp. 1220-1221 [citations omitted].)

The *Phelon* court further reasoned “that limits on credit earning are a form of punishment and that the term “punishment” takes into consideration the effective sentence in light of the availability of sentence-reducing credits.”

(*Id.*, at p. 1221.)

It is especially noteworthy that the *Phelon* court specifically stated as part of its reasoning that *People v. Ramos* (1996) 50 Cal.App.4<sup>th</sup> 810, was not “dispositive” in its decision to award presentence credits under Penal Code section 4019, where the sentence for a violent felony offense had been stayed pursuant to Penal Code section 654. (*In re Phelon, supra*, 132 Cal.App.4<sup>th</sup> at pp. 1220-1221.) In *Ramos* the court held that “by its terms, [former Penal Code] section 2933.1 applies to the offender not to the offense and so limits a violent felon’s conduct credits irrespective of whether or not all his or her offenses come within [Penal Code] section 667.5.” (*People v. Ramos, supra*, 50 Cal.App.3d at p. 817.) This very language in *Ramos* was mirrored in, and formed the basis of, an analogous decision by the *Wheeler* court regarding Penal Code section 2933.2:

“By parity of reasoning, we hold that Penal Code section 2933.2 applies to the offender not to the offense and so limits a murderer’s conduct credits irrespective of whether or not all his or her offenses were murder.”

(*People v. Wheeler, supra*, 105 Cal.App.4<sup>th</sup> at p. 1432, citing *People v. Ramos, supra*, 50 Cal.App.4<sup>th</sup> at p. 817.) “By parity of reasoning,” the *Phelon* court’s determination that “presentence credits should not be limited under section 2933.1(c) based on convictions on which punishment was stayed under section 654,” should equally apply to Penal Code section 2933.2, subdivision (c). Any court decisions to the contrary do not apply because, as in *Ramos*, they “did not involve sentences that were stayed under the multiple punishment prohibition of section 654.” (*In re Phelon, supra*, 132 Cal.App.4<sup>th</sup> at p. 1221.)

**2. The Court of Appeal’s analysis in the instant case is contrary to *Phelon*.**

In the instant case, the appellate court determined that *Phelon* was wrongly decided. (Opinion, p. 4.) The court stated as follows with regard to Penal Code section 2933.2:

“The language of section 2933.2, subdivision (a) is quite clear and leaves no ambiguity: ‘*Notwithstanding Section 2933.1 or any other law, any person who is convicted of murder, as defined in Section 187, shall not accrue any credit. . . .*’ (Italics added.) The legislature thus made clear its intent that other provisions of law should not prevent the application of this section.”

(Opinion, p. 6.)

In further support of its conclusion, the court relied upon *People v. Benson* (1998) 18 Cal.4<sup>th</sup> 24 (“*Benson*”), to assist in the interpretation of Penal Code section 2933.2. (Opinion, pp. 4-5.) In *Benson*, this Court held that a conviction stayed pursuant to Penal Code section 654 may constitute a “strike” under the “Three Strikes” law. (*Id.* at p. 36; Pen. Code, §§ 667, subs. (b)-(i), 1170.12.) However, the Court of Appeal’s reliance on *Benson* is misplaced as it essentially deals with a sentence enhancement, not with presentence conduct credits.

The California Supreme Court case more applicable here is *In re Reeves* (2005) 35 Cal.4<sup>th</sup> 765. There, this Court framed the issue, and held, as follows:

“The question before us is whether section 2933.1(a) restricts petitioner’s ability to earn worktime credit against a concurrent sentence for a nonviolent offense. Petitioner has completed a five-year term for the violent offense that made the section applicable and is now serving the remainder of a concurrent 10-year term for a nonviolent offense. We hold that section 2933.1(a) limited to 15 percent the rate at which petitioner could earn worktime credit as long as he was serving the term for the violent offense, even though the concurrently punished nonviolent offense would not by itself have caused the section to apply; but once petitioner completed the term for the violent offense he became prospectively eligible to earn credit at a rate unrestricted by the section.”

(*Id.* at pp. 768-769.) In the instant case, the trial court stayed execution of petitioner’s sentence for the murder conviction. He is therefore not serving

the sentence as to that charge. Thus, he is entitled to presentence conduct credits as to his conviction of Penal Code section 273ab, given Penal Code section 654's prohibition on the use of a conviction for any punitive purpose if the sentence for that conviction is stayed. (*People v. Pearson* (1986) 42 Cal.3d 351, 361, *In re Phelon, supra*, 132 Cal.App.4<sup>th</sup> at pp. 1220-1221.)

**D. Conclusion.**


Petitioner respectfully requests this court to grant review and to award him presentence conduct credits pursuant to Penal Code section 2933.1 in the amount of 85 days.

## CONCLUSION

For all the reasons set forth above, petitioner respectfully requests this court to grant review and to award him presentence conduct credits in the amount of 85 days.

Dated: June 15, 2007.

**TORRES & TORRES**

A handwritten signature in black ink, appearing to read "Tonja R. Torres". The signature is written in a cursive style with a large initial "T" and "R".

TONJA R. TORRES  
Attorney for Defendant and  
Petitioner James Edward Duff, Jr.

**CERTIFICATION OF WORD COUNT**

The text of this brief consists of 2,397 words as counted by the Microsoft Office Word, version 2003, word-processing program used to generate this brief.

I declare under penalty of perjury and the laws of the state of California that the foregoing is true and correct.

Executed this 15<sup>th</sup> day of June, 2007, at Pasadena, California.

  
TONJA R. TORRES

# APPENDIX

**CERTIFIED FOR PUBLICATION**  
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES EDWARD DUFF, JR.,

Defendant and Appellant.

G036562

(Super. Ct. No. 04NF2414)

OPINION

Appeal from a judgment of the Superior Court of Orange County, James A. Stotler, Judge. Affirmed.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Rhonda Cartwright-Ladendorf and Heather F. Crawford, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant James Edward Duff, Jr., appeals the trial court's decision to deny him presentence conduct credits. He argues that because his sentence for murder was stayed pursuant



to Penal Code section 654,<sup>1</sup> the statute denying presentence conduct credits to those convicted of murder does not apply to him. We disagree and affirm the judgment.

## I

### FACTS

Given the limited nature of defendant's appeal, we need not detail the facts of the case. Defendant was convicted of second degree murder (Pen. Code, § 187, subd (a)) and assault on a child with force likely to cause great bodily injury (§ 273ab). The trial court sentenced defendant to 25 years to life in state prison on the section 273ab count, and stayed a sentence of 15 years to life on the second degree murder count under section 654. Defendant was awarded credit for 567 days actually served, but the court denied him presentence conduct credits.

## II

### DISCUSSION

Defendant claims he should have been awarded conduct credit pursuant to section 2933.1 (15 percent of his actual days in custody, thus adding 85 days of conduct credit to his 567 days actually served). He argues that because the sentence for second degree murder was stayed under section 654, the trial court should not have considered his murder conviction as grounds for denying him presentence conduct credits.

According to defendant, the trial court erroneously applied a case addressing postconviction conduct credits to support its decision. That case was *In re Cervera* (2001) 24 Cal.4th 1073. Regardless of the basis the trial court used for reaching its decision, we will uphold it if the result was correct. (*People v. Trausch* (1995) 36 Cal.App.4th 1239, 1244.)

Section 2933.2 states: "Notwithstanding Section 2933.1 or any other law, any person who is convicted of murder, as defined in Section 187, shall not accrue any credit, as specified in Section 2933." Defendant was indeed "convicted of murder, as defined in Section 187. . . ." He argues, however, that since his sentence on the murder conviction was stayed, his

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<sup>1</sup> Subsequent statutory references are to the Penal Code.

conviction for murder should not prevent him from receiving presentence conduct credit. He relies almost entirely on *In re Phelon* (2005) 132 Cal.App.4th 1214 (*Phelon*). In that case, the defendant was convicted of kidnapping with intent to commit rape, assault with intent to commit rape, assault by means of force likely to produce great bodily injury and making criminal threats. He was sentenced to 11 years on the kidnapping charge, and the remainder of the sentence was stayed pursuant to section 654. (*Id.* at p. 1216.) He was awarded credits pursuant to section 4019 for his presentence time in local custody.

Once in prison, the Department of Corrections took the position that the defendant's ability to earn worktime credit was limited to 15 percent by section 2933.1, subdivision (a). That provision limits any prisoner convicted of a felony enumerated in section 667.5 to accruing no more than 15 percent of worktime credit.<sup>2</sup> Kidnapping to commit rape was not among the felonies listed in section 667.5 at the time of the defendant's conviction. (*Phelon, supra*, 132 Cal.App.4th at pp. 1217-1219.) The court held: "Under *Reeves*, petitioner's postsentence credits should not be limited by section 2933.1(a) because his sentences on the qualifying violent offenses were stayed pursuant to section 654. The sentence that petitioner is actually serving is not one that qualified as a violent offense at the time it was committed." (*Id.* at p. 1219.)<sup>3</sup> The court also held that the defendant's presentence credits should not be limited based on convictions on which punishment was stayed under section 654. (*Id.* at p. 1221.)

*Phelon* includes broad language regarding the intersection between section 2933.1 and section 654. "[S]ection 654 prohibits the use of a conviction for any punitive purpose if the

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<sup>2</sup> Section 2933.1, subdivision (a) states: "Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933."

<sup>3</sup> The decision to which the *Phelon* court referred is *In re Reeves* (2005) 35 Cal.4th 765 (*Reeves*). The question in that case was whether section 2933.1, subdivision (a) limited a prisoner's ability to receive worktime credit against a concurrent sentence for a nonviolent offense. In that case, the prisoner had completed a five-year term for the violent offense and was serving the remainder of the concurrent term for a nonviolent offense. The court held that section 2933.1 did not impose such a limitation, because the defendant was not actually serving a sentence for a violent offense. (*Id.* at p. 780.)

sentence on that conviction is stayed.’ [Citation.] Section 654 prohibits a ‘defendant from being disadvantaged in any way as a result of the stayed convictions.’ [Citation.] Under this principle, it has been held that sentences for convictions that were stayed under section 654 may not be used as a basis for future enhancement in the absence of specific statutory authorization. [Citation.] Likewise, a prior prison term enhancement may not be imposed for an offense for which the prior term was stayed under section 654. [Citation.] In *People v. Avila* (1982) 138 Cal.App.3d 873 [citation], the California Youth Authority (CYA) was not allowed to reject the defendant on the sole ground that his conviction on an offense that was stayed under section 654 made him ineligible for its program. Rejection from CYA on the basis of a stayed sentence for a disqualifying offense was impermissible under section 654 because that would constitute punishment. [Citation.] Courts have adopted the procedure of staying execution of the lesser sentence because it affords the defendant the maximum protection against multiple punishment under section 654. [Citation.] [¶] Petitioner argues persuasively that limits on credit earning are a form of punishment, and that the term ‘punishment’ takes into consideration the effective sentence in light of the availability of sentence-reducing credits.” (*Phelon, supra*, 132 Cal.App.4th at pp. 1220-1221.)

The Attorney General argues that *Phelon* was simply wrongly decided. After careful review, we are compelled to agree. Although the *Phelon* court quoted the language from prior cases regarding “specific statutory authorization” for exceptions to section 654, it did not analyze whether the Legislature had created such an exception in section 2933.1. To determine whether the similar language in section 2933.2 creates such an exception, we examine how other cases have analyzed statutes where this issue arose.

In *People v. Benson* (1998) 18 Cal.4th 24 (*Benson*), the California Supreme Court addressed the question of whether a conviction stayed under section 654 could be considered a strike under California’s “Three Strikes” law. (§§ 667, subds. (b)-(i), 1170.12.) The court held that convictions that had been stayed under section 654 could properly be considered strikes. (*Id.* at p. 26.) In reaching this conclusion, the court began with the plain language of the statute:

“Section 1170.12, subdivision (b), part of the Three Strikes law enacted by the electorate, provides in pertinent part: ‘*Notwithstanding any other provision of law . . . a prior conviction of a felony shall be defined as: [¶] (1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7 as a serious felony in this state. . . . None of the following dispositions shall affect the determination that a prior conviction is a prior felony . . . : [¶] . . . [¶] (B) The stay of execution of sentence.*’ (Italics added; see also § 667, subd. (d) [legislative version].)” (*Id.* at p. 28.)

The court held that the italicized portions of the statute made clear the intent to include convictions for which sentence had been stayed as prior convictions for purposes of the Three Strikes law. (*People v. Benson, supra*, 18 Cal.4th at p. 31.) “The courts of this state on occasion have found fault with the imprecise nature of language contained within statutory enactments. We find it difficult, however, to imagine language clearer, or more unequivocal, than that set forth above. [Citation.]”

(*Id.* at pp. 30-31.)

The “fundamental task of statutory construction is to ‘ascertain the intent of the lawmakers so as to effectuate the purpose of the law.’” (*People v. Cruz* (1996) 13 Cal.4th 764, 774-775.) The language in section 2933.2, subdivision (a) is not quite as explicit as the statute at issue in *Benson*. It states “Notwithstanding . . . any other law,” but does not go on to specify that stayed sentences shall not impact the application of the statute. Nonetheless, the question is whether the language of the statute is clear and unambiguous, not whether it could possibly have been even more explicit. “Well-settled rules apply: ‘When statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it.’ [Citations.]” (*People v. Benson, supra*, 18 Cal.4th at p. 30.)

In *Benson*, the court noted previous decisions holding that the Legislature need not expressly reference section 654 to create an exception to the general rule precluding multiple punishment under that section, including *People v. Hicks* (1993) 6 Cal.4th 784, 791-792 (Legislature not required to cite § 654 in § 667.6); *People v. Ramirez* (1995) 33 Cal.App.4th 559,

573 (“A statute which provides that a defendant shall receive a sentence enhancement in addition to any other authorized punishment constitutes an express exception to section 654”); *People v. Powell* (1991) 230 Cal.App.3d 438, 441 (holding that language contained in Health and Safety Code section 11370.2, authorizing ““double punishment” . . . ‘in addition to any other punishment authorized by law,’” prevented the applicability of section 654, which was not expressly mentioned in the statute). (*People v. Benson, supra*, 18 Cal.4th at p. 32.)

The language of section 2933.2, subdivision (a) is quite clear, and leaves no ambiguity: “*Notwithstanding Section 2933.1 or any other law*, any person who is *convicted of murder*, as defined in Section 187, shall not accrue any credit . . . .” (Italics added.) The Legislature thus made clear its intent that other provisions of law should not prevent the application of this section. Other decisions have agreed that the language of section 2933.2 is clear: “[T]he language of section 2933.2, subdivision (c) is broad and evidences an intention to impose a complete ban on presentence conduct credits for those defendants who come within its purview. Subdivision (c) states that, notwithstanding section 4019 ‘or any other provision of law,’ no presentence conduct credits may be earned by a person convicted of murder. That language reflects an intent to supersede any and all provisions of law that might support an award of presentence conduct credits.” (*People v. McNamee* (2002) 96 Cal.App.4th 66, 70.) The language of section 2933.2, subdivision (a) is equally broad and clear, and we believe it evinces an intent to preclude presentence conduct credits to anyone convicted of murder, even if that sentence is stayed pursuant to section 654.

### III

#### DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I, Tonja R. Torres, am employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action; my business address is PMB 332, 3579 Foothill Boulevard, Pasadena, California 91107.

On June 20, 2007, I served the foregoing **Petition For Review** by mail upon the following interested parties in this action:

**SEE ATTACHED SERVICE LIST**

I declare on this 20<sup>th</sup> day of June, 2007, under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
TONJA R. TORRES

State of California  
Department of Justice  
Office of the Attorney General  
P.O. Box 85266  
San Diego, California 92186-5266

Appellate Defenders, Inc.  
555 West Beech Street  
Suite 300  
San Diego, California 92101

Sonia E. Balleste  
Deputy District Attorney  
P.O. Box 808  
Santa Ana, CA 92702

Michael Hill  
Orange County Public Defender's Office  
14 Civic Center Plaza  
Santa Ana, CA 92701-4029  
(Appellant's trial counsel)

Honorable James A. Stotler  
Orange County Superior Court  
Central Justice Center  
700 Civic Center Drive West  
P.O. Box 1994  
Santa Ana, CA 92702-1994

California Court of Appeal  
Fourth Appellate District  
Division Three  
925 North Spurgeon Street  
Santa Ana, CA 92701-3700

James Edward Duff, Jr.