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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. LORENZO CHAVEZ, Defendant and Petitioner.	S_____ C074138 (Yolo County Superior Court No. 04-2140)

PETITION FOR REVIEW

After A Published Decision by the Court of Appeal,
Third Appellate District
Filed November 3, 2016

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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LORENZO CHAVEZ,	
Defendant and Petitioner.	

PETITION FOR REVIEW

TO: THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioner Lorenzo Chavez petitions this Court for review following the *published* decision of the Court of Appeal, Third Appellate District, filed on November 3, 2016, affirming the trial court's determination that it lacked authority under Penal Code section 1385 to dismiss Mr. Chavez's case.[1]

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[1] A copy of the Court of Appeal's opinion is attached as Appendix A. Citations to the opinion are indicated by "Op." followed by the page number. Statutory references are to the Penal Code unless otherwise designated.

No petition for rehearing was filed. (Rule of Court 8.504, subd. (b)(3).)

ISSUE PRESENTED FOR REVIEW (Rule 8.500)

Whether Penal Code section 1203.4 eliminates a court's discretion under Penal Code section 1385 to dismiss a matter in the interests of justice after a grant of probation?

INTRODUCTION

Lorenzo Chavez was brought to the United States when he was only a month old. He has lived here ever since. In his early twenties he became involved with drugs, and was arrested for agreeing to sell methamphetamine to a police officer, even though he had no narcotics to sell and never attempted to consummate the sale. He plead no contest in 2005 to offering to sell methamphetamine (Health & Safety Code § 11379), unaware that this conviction would permanently prevent him from obtaining any kind of immigration relief, and potentially force him to leave his entire family and return to Mexico with his young son.

Mr. Chavez successfully overcame his addiction, completed his probation, and has been a productive and valued member of his community. Because he is no longer in custody, habeas corpus is not available, and pursuant to this Court's decision in *People v. Kim* (2009) 45 Cal.4th 1078, 1108, the writ of error coram nobis is not available to him. Thus, in order to obtain relief from the dire immigration consequences of his conviction, he asked the Superior Court to exercise its discretion under section 1385 to dismiss his case in furtherance of justice, as the remedy available under section 1203.4 would not relieve his immigration consequences.

The trial court determined that it lacked authority under section 1385 to dismiss the matter, holding that section 1203.4 was the exclusive means for a probationer to obtain post-conviction relief. The Court of Appeal, in its published decision, affirmed the order, and in so doing failed to appreciate the important differences between the statutory schemes,. and unnecessarily limited courts' power under section 1385. Furthermore, the opinion below directly conflicts with other published authority on the subject. For the

reasons discussed herein, review should be granted to resolve the split of opinion and determine what the scope of a court's authority is under section 1385 when a defendant has been granted probation.

WHY REVIEW SHOULD BE GRANTED

This case presents an important issue of first impression about the scope of a court's authority under section 1385 and therefore review is necessary to settle an important question of law. (Cal. Rules of Court, rule 8.500 (b)(1).) In addition, the opinion below cannot be reconciled with other published authority, *People v. Orabuena* (2004) 116 Cal.App.4th 84, and therefore review is necessary to secure uniformity of decision. (Cal. Rules of Court, rule 8.500 (b)(1).) The question here is whether under Penal Code section 1385 a trial court has the discretion to dismiss a criminal matter where no judgment has been imposed due to a grant of probation, and the defendant has not sought relief under Penal Code section 1203.4.

This is a matter of state-wide significance and one of grave importance to many Californians for whom dismissal under section

1385 may be their only hope to avoid the severe collateral consequences of an ill-advised plea bargain. In its published opinion, the Court of Appeal concluded that section 1203.4 effectively overrides the court's broad discretion under section 1385 and provides *the sole means for dismissal of a criminal action where probation has been granted.* For reasons discussed later, the opinion below cannot be reconciled with *People v. Orabuena* (2004) 116 Cal.App.4th 84, which held that a court *can* use its authority under section 1385 to dismiss a case *during* the course of probation. As discussed below, because the opinion below fails to meaningfully engage with the rationale of *Orabuena,* it lacks logical coherence and fails to provide trial courts any meaningful guidance as to the relationship between a grant of probation, section 1203.4 relief eligibility and a court's authority under section 1385.

The opinion below is flawed for a number of other reasons. First, it fails to appreciate or even acknowledge the vastly different purposes and conditions for relief under section 1203.4 versus section 1385. Section 1203.4 is explicitly rehabilitative, and mandates

relief for defendants who have met certain conditions. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.) Section 1385, however, is remedial and reserved to the broad discretion of the courts to serve the interests of justice in individual cases; indeed, section 1385 may *not* be used in a rehabilitative fashion. (*People v. McAlonan* (1972) 22 Cal.App.3d 982, 987.) The Court of Appeal believes that two such statutory schemes cannot exist simultaneously, and therefore elected to abrogate the more general one in favor of the more specific one. The opinion ignores the important differences between the two statutory schemes to conclude that permitting section 1385 relief to co-exist with section 1203.4 would nullify the later. (Op. at p. 12.) Such a position too easily dispenses with the broad grant of discretion under section 1385 by ignoring the fundamentally different roles the two statutory schemes play in our justice system.

The opinion below also mistakenly concludes that the history of section 1203.4 supports the conclusion that Legislature sought to limit courts' power under section 1385. In essence, the opinion below relied on the history of the increasingly narrow range of

benefits afforded by relief under section 1203.4 as evidence that it is intended to be the sole form of post-conviction relief for probationers. But again, this conclusion fails to recognize the important distinction that section 1203.4 creates a rehabilitative system designed to motivate good performance on probation, whereas section 1385 is remedial and designed to serve the interests of justice outside the rehabilitative system. It is uncontroversial to say that section 1203.4 provides the sole means of relief for a probation within the rehabilitative framework of a grant of probation. That truth is not in tension with the important policy of preserving the courts' historically broad discretion to dismiss a case when the interests of justice so require.

Finally, the Court of Appeal tried extract support for its conclusion from a number of this Court's opinions in ways that misconstrue those opinions. Most of the authority on which it relied never even considered the role of section 1385. This published opinion draws broad and unsupported conclusions from a number of this Court's opinions, and review should be granted to address

these conclusions, as well.

STATEMENT OF THE CASE AND FACTS

Petitioner adopts the statement of the case and facts as set forth in the opinion below. (Op. at pp. 1-3.)

ARGUMENT

COURTS RETAIN DISMISSAL AUTHORITY OUTSIDE THE CONTEXT OF PENAL CODE SECTION 1203.4 TO ACT IN THE INTERESTS OF JUSTICE FOR REMEDIAL RATHER THAN REHABILITATIVE PURPOSES

The resolution of the issue here requires an analysis of the relationship of section 1385 and 1203.4, a determination of whether the statutes can co-exist and whether there is sufficient evidence of legislative intent to override the broad authority of section 1385.

A. Legal Standard

The interpretation of a statute is a question of law subject to independent review. (*People ex. rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

B. Penal Code Sections 1385 and 1203.4 are Addressed to Different Purposes and Courts Can Retain Their Authority Under Section 1385 Without Undermining Section 1203.4

Subject to certain exceptions, section 1203.4 is a *mandatory* grant of relief upon proof of rehabilitation through successful completion of probation. (*People v. Field* (1995) 31 Cal.App.4th 1778, 1787.) "A grant of relief under section 1203.4 is intended to reward an individual who successfully completes probation by mitigating some of the consequences of his conviction ... ." (*People v. Field, supra,* 31 Cal.App.4th at p. 1787.) The court does have the discretion to grant the relief "in any other case" so long as there was a grant of probation. (*People v. Morrison* (1984) 162 Cal.App.3d 995.)[2] Thus for example, section 1203.4 relief is proper even where the probationer has violated probation but nonetheless demonstrated genuine

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[2] Although even that discretion is limited, as the statute specifically precludes relief for probationers convicted of certain sex offenses and other enumerated offenses. (§ 1385, subd. (b).)

rehabilitation. (*People v. McLernon* (2009) 174 Cal.App.4th 569.)[3]

In other words, the power of relief under section 1203.4 is fundamentally a part of a *rehabilitative* inducement to successfully complete probation. By contrast, the power under section 1385 is an equitable power to serve the interests of justice; a notion so broad that, as this Court has recognized, a court may enter a dismissal even *after* a jury's guilty verdict. (*People v. Superior Court of Marin County* (1968) 69 Cal.2d 491, 501; *People v. Orin* (1975) 13 Cal.3d 937, 946.) A dismissal under section 1385 is fundamentally an act in equity, which requires "consideration both of the constitutional rights of the

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[3] "The statute does not purport to render the conviction a legal nullity." (*People v. Mgebrov* (2008) 166 Cal.App.4th 579, 584, quoting *People v. Vasquez* (2001) 25 Cal.4th 1225, 1230.) Indeed, the rehabilitative nature of section 1203.4 is what makes it ineffective for granting relief from immigration consequences in most cases. (*Nunez-Reyes v. Holder* (9th Cir. 2011) 646 F.3d 684 (en banc); *Matter of Roldan* (BIA 1999) 22 I. & N. Dec. 512; *Matter of Pickering* (BIA 2003) 23 I. & N. Dec. 621.) By contrast, a section 1385 dismissal voids the conviction for all purposes. (*People v. Alvarez* (1996) 49 Cal.App.4th 679, 691-692.) As such, a section 1385 dismissal is far more likely to have ameliorative effects on the immigration consequences of a conviction. (*E.g., Matter of Pickering* (BIA 2003) 23 I. & N. Dec. 621; *Herrera-Inirio v. INS* (1st Cir. 2000) 208 F.3d 299, 306.)

defendant, and the interests of society represented by the People." (*People v. Beasley* (1970) 5 Cal.App.3d 617, 636.) Although there are many valid reasons for a judge to exercise the power of dismissal under section 1385, the one thing it is *not* is a tool of rehabilitation. (*People v. McAlonan* (1972) 22 Cal.App.3d 982, 987.) Thus, given the fundamental differences between the statutes, section 1203.4 cannot be seen to infringe on the scope of a court's discretion under section 1385.

C. There is Insufficient Evidence of Legislative Intent to Limit Courts' Authority Under Section 1203.4

Courts will not "interpret a statute as eliminating courts' power under section 1385 'absent a clear legislative direction to the contrary.'" (*People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497, 518, quoting *People v. Thomas* (1992) 4 Cal.4th 206, 210.) Yet, the opinion below concluded that the Legislature did intend to limit courts' authority under section 1385 by reference to the amendatory history and by analogy to this Court's decision in *People v. Tanner* (1979) 24 Cal.3d 514. Neither of this lines of argument are evidence

of clear legislative directive to limit courts' authority under section 1385.

1. The amendatory history of section 1203.4 is in not adequate to infer legislative intent to limit the scope of section 1385

The opinion below relied primarily on the history the amendatory history of section 1203.4 to justify its conclusion that the Legislature intended section 1203.4 to divest courts of authority under section 1385. (Op. at pp. 7-10.) What that history shows is an intent to create a comprehensive rehabilitative system that would offer specific, but limited, relief to probationers. And normally, that would be the proper avenue of relief for a probationer to follow. However, the existence of this system is not itself sufficient evidence that the Legislature sought eliminate the court's power under section 1385 to provide relief when considerations of equity so require.

The Court of Appeal's argument regarding the amendatory history of section 1203.4 is that the Legislature could not have intended to preserve power to dismiss under 1385 when it passed

the *original* section 1203.4, because that had statute same impact as section 1385 - rendering the conviction a legal nullity. (Op. at p. 9) If there continued to be an identity between section 1203.4 and section 1385, then the Court of Appeal's conclusion would have some weight. But then, the argument continues, because the Legislature continually *narrowed* the scope of relief section 1203.4 provided, this is further evidence that section 1385 has been completely eclipsed by section 1203.4 . (Op. at pp. 11-12.) Here the Court of Appeal's logic works against itself.

The very history the opinion below relies on demonstrates that section 1203.4 occupies a *completely different space* in our justice system than does section 1385. The Court of Appeal felt that because the Legislature has demonstrated an ongoing concern to narrow and limit the relief available to probationers as part of a rehabilitative process, that eclipsed the possibility of a court using a *different* equitable power to grant a defendant relief when the interests of justice so required. Yet there is nothing inconsistent about having a detailed scheme for promoting rehabilitation by granting a form of

post-conviction relief and preserving a court's authority to do justice for reasons unconnected to rehabilitation.

Furthermore, even if the original passage of section 1203.4 eclipsed section 1385, when the Legislature began limiting the effect of section 1203.4, such limitations must have acted to restore court's authority under section 1385. That is, if the fact that the original section 1203.4 provided the same relief as that available under section 1385 was what *limited* courts' power under section 1385, then once the nature of the relief was diminished, that limitation should have been removed. Indeed, once complete relief was foreclosed by the amendments to section 1203.4 and therefore the two statutes no longer afforded the same kind of relief, in order to preserve courts' equitable powers, it is necessary to conclude that authority under section 1385 was restored.

In addition, the Court of Appeal offered no evidence of legislative intent (other than the amendments themselves) to demonstrate the Legislature was considering the impact on section 1385 when it made the various amendments to section 1203.4.

2. *People v. Tanner* (1979) 24 Cal.3d 514 does not support the Court of Appeal's conclusion

The Court of Appeal relied on this Court's decision in *People v. Tanner* (1979) 24 Cal.3d 514 ("*Tanner*") to argue by analogy that section 1203.4 limits a court's authority under 1385. But *Tanner* is inapposite. In *Tanner*, the question involved section 1203.06, which *explicitly* limited the power of a court to grant to probation to anyone who personally uses a firearm during the commission of robbery. This Court considered whether section 1385 permitted a court to strike a firearm allegation and thereby avoid the mandatory prohibition in section 1203.06. This Court concluded that there was clear statutory intent to apply section 1203.06 in all circumstances, and that therefore the allegation could not be dismissed under section 1385:

> Our conclusion is supported by pertinent and timely expression of legislative intent existing when section 1203.06 was enacted. The Legislative Counsel's summary of the 1975 enactment states that trial court discretion to grant probation in unusual cases is eliminated so that

"probation and suspension of sentence would be denied, *without any exception in unusual cases in the interests of justice,* to any person who uses a firearm during the commission of various felonies, including . . . robbery . . . ." (Leg. Counsel's Dig. of Sen. Bill No. 278, 1 Stats. 1975 (Reg. Sess.) Summary Dig., ch. 1004, p. 262; italics added.) This statement is consistent with a staff memorandum prepared by the Senate Committee on the Judiciary stating that Senate Bill No. 278 (in which the 1975 amendments to §§ 1203 and 1203.06 were introduced), "Prohibits, *without exception,* the granting of probation to persons who have carried or used firearms in connection with certain crimes, for which probation may be obtained under existing law in unusual cases in the interests of justice." (Italics added.) Finally, there exists the executive statement of Governor Brown issued by press release in which he explained the effects of the legislation. He stated: "By signing this bill, I want to send a clear message to every person in this state that using a gun in the commission of a serious crime means a stiff prison sentence. Whatever the circumstances, however eloquent the lawyer, *judges will no longer have discretion to grant probation even to first offenders.*" (Governor's Press Release No. 284 (Sept. 23, 1975), italics added.)

(*Tanner, supra,* 24 Cal.3d at p. 520.)

Thus the *Tanner* Court was faced with clear evidence that use of section 1385 to dismiss the allegation would directly contravene legislative intent.

As discussed above, no such clear indication appears in the legislative history here. The Court of Appeal nonetheless draws a number of erroneous conclusions from *Tanner*. The opinion below seizes on the fact that "like the probation statute in Tanner [citation] , the original section 1203.4 contained mandatory terms."[4] (Op. at p. 8.) But this is a category error. The mandatory language in *Tanner* stated that probation "shall not be granted to" specified persons. (*Tanner, supra,* 24 Cal.3d at p. 528, fn. 4, citing then-extent section 1203.06.) Here, the mandatory language the Court of Appeal relies on makes *granting* relief under section 1203.4 mandatory. In *Tanner,* the mandatory prohibition on grants of probation was seen to override a court's ability to strike the allegation to grant probation.

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[4] Current section 1203.4 also contains mandatory provisions, "defendant...shall be permitted to withdraw his or her plea...,""court shall set aside the verdict of guilty." (§ 1203.4, subd. (a)(1).)

That is a completely different species of issue than whether the requirement that a court grant one kind of relief to qualified individuals in certain circumstances overrides a court's ability to provide a *different* kind of relief in other circumstances.

The opinion below also draws another inapt analogy from *Tanner*. According to the Court of Appeal, because section 1203.4 relates to the "limited power of dismissal for purposes of probation" it necessarily overrides section 1385 because of its greater specificity. (Op. at p. 8, quoting *Tanner, supra,* 24 Cal.3d at p. 521.) But this simply defines the issue in a way that requires the conclusion. The dismissal at issue here was not "for purposes of probation," indeed it was precisely *outside the scope of the rehabilitative scheme of probation.* The Court of Appeal fails to explain how the mere grant of probation operates to override a court's authority under section 1385.

D. The Court of Appeal's Conclusion Conflicts with Other Published Authority and is Not Supported by Case Law

The opinion below conflicts with the result and reasoning in In *People v. Orabuena* (2004) 116 Cal.App.4th 84 ("*Orabuena*"). In

Orabuena, the Sixth District Court of Appeal held the Superior Court had discretion, under section 1385, to dismiss a misdemeanor conviction as to which defendant had already been placed on probation, in the interests of justice for the purpose of qualifying the defendant for drug treatment under Proposition 36. After careful analysis, it concluded that a grant of probation, as opposed to imposition of judgment, did not bar use of section 1385 to dismiss an action after sentencing in the interests of justice. (*Id.*, at p. 96.) The court relied on the broad power of section 1385 and the absence of any Legislative directive limiting it in these circumstances. (*Id.*, at p. 95.) Moreover, the *Orabuena* court noted the fact the defendant was already on probation did not preclude the exercise of section 1385 authority, so long as judgment had not been imposed. (*Id.*, at pp. 96-98.)

Here, the Court of Appeal distinguished *Orabuena* on the basis that the defendant in that case may still have been on probation and was thus yet not eligible for relief under section 1203.4. (Op. at p. 12.) The necessary corollary of that conclusion (although the court

did not explicitly state this) is that once a defendant successfully completes probation, courts *lose* their power under section 1385 to dismiss. But this conclusion leads to absurd results. It cannot be eligibility for section 1203.4 relief that divests a court of its authority under section 1385, because section 1203.4 itself allows for relief in the court's discretion, even if the defendant has not successfully completed probation. Under the Court of Appeal's theory, a defendant who successfully completes probation divests a court of its authority under section 1385, but when a defendant violates his probation and is thus not eligible, a court retains its authority under section 1385, unless the court then exercises its discretion to grant section 1203.4 notwithstanding the defendant's violation of probation. This highly irrational result shows that the opinion below cannot be squared with the result in *Orabuena*.

Furthermore, the cases the Court of Appeal cited in support of its conclusion are not authority such a conclusion. The Court of Appeal relied on *In re Disbarment of Herron* (1933) 217 Cal. 400, an attorney disbarment case in which the court was considering the

effects of the trial court's actions in the underlying criminal proceeding that precipitated disbarment. (Op. at p. 9.) In that 1933 case, the trial court had set aside the conviction one month after the expiration of the probation condition. This Court found that the trial court's action was explicitly authorized by then-extant section 1203(4) and therefore the attorney had been relieved of the disabilities from the conviction and thus disbarment was not warranted. The opinion below observes that *Herron* never mentions sections 1385, and therefore this is authority for the proposition that section 1385 did not apply. (Op. at p. 10.) Of course, cases are not authority for propositions not considered (*People v. Gilbert* (1969) 1 Cal. 3d 475, 482, fn. 7), and the argument specifically made to the *Herron* court was that section 1203(4) authorized the trial court's action. (*Herron, supra,* 217 Cal. at p. 403.) There was no reason for the *Herron* court to consider the relationship of section 1385, and it did not do so.

The opinion below repeats the error of relying on this Court's opinions for propositions not considered therein by also citing as

authority *In re Phillips* (1941) 17 Cal.2d 55, *People v. Banks* (1959) 53 Cal.2d 370 and *Stephens v. Toomey* (1959) 51 Cal.2d 864. (Op. at pp. 10-11.) Yet none of those cases had occasion to consider the role of section 1385. *Phillips* simply held that operation of section 1203.4 relief did not act to reverse the automatic order of disbarment that was entered when the attorney in the underlying case was sentenced for a crime of moral turpitude. (*In re Phillips, supra,* Cal.2d at pp. 56-59.) In *People v. Banks,* this Court considered the case of defendant who claimed he was wrongfully convicted of being a felon in possession because he had completed probation on the underlying case and was entitled to section 1203.4 relief, but did not avail himself of it. (*Banks, supra,* 53 Cal.2d at pp. 375-377.) The *Banks* Court had no occasion to consider the role of section 1385 in the proceedings, and the matter was not raised. Finally, *Stephens v. Toomey* involved a writ of mandate to compel the registrar of voters to permit the petitioner to vote; this Court held the matter was not ripe because the petitioner was still on probation. (*Stephens v. Toomey, supra,* 51 Cal.2d at p. 875.) Thus none of these cases

provides authority for the Court of Appeal's conclusion.

The opinion below also claims authority from the case of *People v. Barraza* (1994) 30 Cal.App.4th 114 (Op. at p. 11.), but *Barraza* is inapposite. In that case, the prosecution and defense sought to enter into a stipulated reversal of judgment (and a subsequent new plea) in order to provide some immigration relief to the defendant, and petitioned the Court of Appeal for the stipulated reversal. The Court of Appeal simply held that unlike in civil matters, criminal judgments are not subject to stipulated reversals, particularly where they involve post-judgment plea bargains. (*Barraza, supra,* 30 Cal.App.4th at pp. 119-120.) The court seized on this language in the *Barraza* opinion:

> We do not know whether the relief from deportation appellant seeks could have been provided under Penal Code section 1203.4 and deem it inappropriate to make that inquiry because appellant has not sought such relief. Section 1203.4 is pertinent to our analysis only because it is the only postconviction relief from the consequences of a valid criminal conviction available to a defendant under our law.

(*People v. Barraza, supra, 30 Cal.App.4th* at pp. 120-121.)

However, the *Barraza* court immediately followed that statement with a footnote that acknowledged:

> Although the discretion of a trial judge to dismiss a criminal action under Penal Code section 1385 in the interests of justice "may be exercised at any time during the trial, including after a jury verdict of guilty" [citation], this statute has never been held to authorize dismissal of an action after the imposition of sentence and rendition of judgment. [Citation.] In any event, section 1385 can be invoked only by a trial judge or magistrate on his or her own motion or that of the prosecuting attorney, it does not confer any right of relief upon the defendant. [Citation.]

(*Id.* at p. 121, fn. 8 [citations omitted].)

Thus, the opinion below is unsupported by any authority, and indeed conflicts with at least one published case.

ES. The Court of Appeal's Limitation of Authority Under Section 1385 is Inconsistent With the Legislature's Directive that Such Authority Be Exercised "In the Interests of Justice"

Section 1385 authorizes the court to dismiss "in furtherance of justice." (§ 1385, subd. (a).) "'Furtherance of justice' as used in that section requires consideration of the constitutional rights of the defendant and the interests of society. Courts are empowered to fashion a remedy for deprivation of a constitutional right to suit the needs of the case." (*People v. Superior Court (Flores)* (1989) 214 Cal.App.3d 127, 144, citing *In re Pfeiffer* (1968) 264 Cal.App.2d 470, 477; see also *People v. Orin* (1975) 13 Cal.3d 937, 945; *People v. Thorbourn* (2004) 121 Cal.App.4th 1083, 1088.) It is apparent that the Legislature did not (nor could it have) contemplate and delineate every conceivable circumstance that would warrant exercise of the court's discretionary powers. Rather, it entrusted the judiciary with a broad grant of authority precisely to ensure that just results could be achieved and society's interests served. The history of section 1385 militates towards finding that its scope extends to a dismissal in

Mr. Chavez's circumstance. (See, e.g., *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 518 (recounting broad judicial interpretations of section 1385).)

Moreover, to deprive courts of this authority would be to potentially further *injustice*. There are numerous situations beyond Mr. Chavez's where the exercise of section 1385 discretion would be the only avenue of relief to achieve a just result. For example, someone, who after completing his probation learned that he had received ineffective assistance of counsel cannot file a petition for a writ of habeas corpus, because he is no longer "in custody." (*People v. Villa* (2009) 45 Cal.4th 1063, 1068.) Yet to allow his conviction to stand would unjust. The broad scope of section 1385's authority must be preserved so that it may act as the remedy of last resort to achieve *substantive* justice, especially where procedural bars prevent such a result.

Finally, the fact that Mr. Chavez was no longer on probation does not bar exercise of discretion under section 1385. As this Court has observed, "[t]he powers of the [trial] court, over the defendant

and the cause, when it retains jurisdiction as provided by Penal Code, sections 1203 through 1203.4, ... are well nigh plenary in character." (*People v. Banks* (1959) 53 Cal.2d 370, 384.) Once the court has granted probation, so long as the court does not render judgment, the court retains jurisdiction over the action. (*Id.*) Indeed, this must be so or section 1203.4 relief would be impossible. Relief under that statute *requires* that the period of probation has expired. Yet, the court still has authority to order the plea withdrawn and the matter dismissed. So it is with section 1385. Section 1385 contains no time limitation in its language, nor has any court construed it to be subject to a time limitation, except the Court of Appeal in this case.

Petitioner's interpretation is consistent with the Legislature's grant of broad equitable powers to courts, powers which are not bound by the procedural requirements of writ proceedings. (Cf. *People v. Kim* (2009) 45 Cal.4th 1078, 1096-1097 (writ of coram nobis requires *inter alia,* due diligence and exhaustion of other remedies); *In re Stankewitz* (1985) 40 Cal.3d 391 (writ of habeas corpus subject to

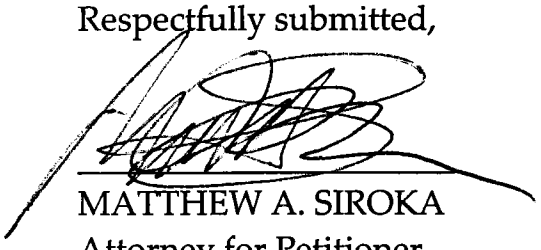
a timeliness requirement).) The limitations on writ proceedings are guided by considerations of finality, as well as protection against unscrupulous litigants who may abuse the process of the court, among other things. (*People v. Kim, supra,* 45 Cal.4th at p. 1097.) By contrast, the authority vested in the courts by section 1385 is guided by the overarching consideration of the "furtherance of justice." As that end is left to the sound discretion of the courts, there is no need for the procedural fencing typical of writs or statutory remedies directed towards a specific goal.

CONCLUSION

The Legislature has determined that there are circumstances in which the exercise of judicial discretion is necessary to ensure substantive justice. That determination is embodied in the grant of authority in section 1385. In the absence of specific legislative direction to the contrary, the Court of Appeal should not be permitted to unduly limit this incredibly important power. For the reasons stated herein, the Court should grant review.

Dated: December 12, 2016

Respectfully submitted,



MATTHEW A. SIROKA
Attorney for Petitioner

CERTIFICATE OF WORD COUNT

Counsel for hereby certifies that this brief consists of 5,024 words (excluding tables, proof of service, and this certificate), according to the word count of the computer word-processing program. (California Rules of Court, rule 8.504(d)(1).)

Dated: December 12, 2016

MATTHEW A. SIROKA

APPENDIX A

OPINION BELOW

Filed 11/3/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE, Plaintiff and Respondent, v. LORENZO CHAVEZ, Defendant and Appellant.	C074138 (Super. Ct. No. CRF042140)

APPEAL from a judgment of the Superior Court of Yolo County, Stephen L. Mock, Judge. Affirmed.

Matthew A. Siroka, Retained Counsel for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen, Supervising Deputy Attorney General, Robert C. Nash, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Lorenzo Chavez pleaded no contest to charges that he offered to sell a controlled substance and failed to appear. The trial court suspended imposition of sentence and placed defendant on probation for four years.

After defendant successfully completed his probation in 2009, he filed a motion pursuant to Penal Code section 1385,[1] asking the trial court to dismiss the action in the

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[1] Undesignated statutory references are to the Penal Code.

interests of justice based on ineffective assistance of counsel and asserted legal errors. The trial court concluded that because the motion was brought pursuant to section 1385 rather than section 1203.4, it did not have authority after probation ended to grant the requested relief. The trial court denied the motion to dismiss.

The People contend the denial was not an appealable order. Defendant asserts the order is appealable and the trial court erred in ruling that it lacked authority to dismiss under section 1385.

We conclude the order is appealable and the trial court did not err. Section 1203.4 is the exclusive method for a trial court to dismiss the conviction of a defendant who has successfully completed probation.

We will affirm the judgment.

BACKGROUND

Defendant negotiated, but did not show up to complete, the sale of methamphetamine to an undercover law enforcement agent. The People initiated a criminal case against defendant and the trial court released him on his own recognizance. Defendant failed to appear. In May 2005, defendant pleaded no contest to offering to sell a controlled substance (Health & Saf. Code, § 11379, subd. (a) -- count 1) and failure to appear (§ 1320, subd. (b) -- count 2). The trial court suspended imposition of sentence and placed defendant on probation for four years.

In 2009 defendant successfully completed his probation. Years later, in March 2013, he filed a motion pursuant to section 1385, asking the trial court to dismiss the action in the interests of justice. Among other things, defendant claimed he received ineffective assistance of counsel in entering his plea. He said that because of various legal errors he entered a guilty plea without knowing the immigration consequences. Defendant argued a trial court has authority under section 1385 to dismiss a case after probation is ordered.

The People countered that although defendant raised significant concerns, he used the wrong procedure to request relief. The People argued that because probation had been terminated, the trial court did not have authority to grant section 1385 relief.

The trial court said it did not find any case holding that section 1385 authorizes a trial court to grant a motion to dismiss after probation has expired. According to the trial court, such authority comes under section 1203.4 rather than section 1385, but defendant did not bring his motion pursuant to section 1203.4. The trial court denied the motion to dismiss.

DISCUSSION

As a threshold matter, the People claim the trial court denial was not an appealable order because defendant did not appeal or challenge the negotiated plea he entered in 2005. We disagree.

Except in circumstances not applicable here, a defendant may appeal from a final judgment of conviction and from any order made after judgment, affecting the substantial rights of the party. (§ 1237, subds. (a), (b).) Where a defendant is granted probation and the probationary period expires without revocation, the order granting probation is a "final judgment" within the meaning of section 1237, subdivision (a). (*People v. Chandler* (1988) 203 Cal.App.3d 782, 787.) An order denying defendant relief under section 1203.4 is an appealable order made after judgment affecting the substantial rights of the defendant. (§ 1237, subd. (b); *Chandler, supra,* 203 Cal.App.3d at p. 787; *People v. Johnson* (1955) 134 Cal.App.2d 140, 142-143 (*Johnson*) [in a case involving a denial of a section 1203.4 motion, a different panel of this court stated, "if the probationary period expires without revocation, there can then be no formal judgment, and the order granting probation under the provisions of Penal Code, section 1237, must be considered as the final judgment insofar as any order made thereafter 'affecting the substantial rights of the party' are concerned."]; see also *People v. Feyrer* (2010) 48 Cal.4th 426, 433, fn. 5; *People v. Totari* (2002) 28 Cal.4th 876, 886-887.)

Turning to defendant's contention, he argues section 1203.4 does not limit the trial court's power to dismiss a case pursuant to section 1385 after the defendant successfully completes probation.

We review de novo issues involving the interpretation of statutes. (*People v. Mgebrov* (2008) 166 Cal.App.4th 579, 585 (*Mgebrov*).) " 'The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] But "[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend." [Citations.] Thus, "[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute "with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness." [Citation.]' " (*People v. Thomas* (1992) 4 Cal.4th 206, 210 (*Thomas*).) "[A] wide variety of factors may illuminate the legislative design, ' "such as context, the object in view, the evils to be remedied, the history of the time and of legislation upon the same subject, public policy and contemporaneous construction." ' [Citations.]" (*Walters v. Weed* (1988) 45 Cal.3d 1, 10.)

Section 1203.4 applies to probationers whose period of probation has ended. (§ 1203.4, subd. (a)(1); *People v. Morrison* (1984) 162 Cal.App.3d 995, 997-998.) The statute allows a qualifying defendant, at any time after the termination of the period of probation, to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty. (§ 1203.4, subd. (a)(1).) If the defendant was convicted after a plea of not guilty, section 1203.4 requires the court to set aside the verdict of guilty. (*Ibid.*) In either case, the court shall dismiss the accusations or information against the defendant. (*Ibid.*) The defendant is entitled to relief under section 1203.4 if (1) he or she has fulfilled the

conditions of probation for the entire period of probation, (2) he or she has been discharged prior to the termination of the period of probation, or (3) the trial court, in its discretion and in the interests of justice, determines that the defendant should be granted relief under section 1203.4, and (4) the defendant is not then serving a sentence for any offense, is not on probation for any offense, or is not charged with the commission of any offense. (*Ibid.*)

Dismissal of the accusations or information under section 1203.4 releases the defendant from all penalties and disabilities resulting from the conviction, except as provided in section 1203.4. (§ 1203.4, subd. (a)(1).) Such relief is intended to reward a defendant who successfully completed probation by mitigating some of the consequences of the conviction. (*Mgebrov, supra,* 166 Cal.App.4th at p. 584.) However, dismissal under section 1203.4 does not erase a conviction; it "merely frees the convicted felon from certain 'penalties and disabilities' of a criminal or like nature." (*Adams v. County of Sacramento* (1991) 235 Cal.App.3d 872, 877-878.) As we will explain later in this opinion, there are numerous exceptions to the relief authorized by section 1203.4. (§ 1203.4, subds. (a), (b); *People v. Frawley* (2000) 82 Cal.App.4th 784, 790-792.)

Section 1385 is different. Pursuant to that section, a judge or magistrate may, on his or her own motion or upon application of the prosecuting attorney, and in furtherance of justice, order an action dismissed.[2] (§ 1385.) A dismissal pursuant to section 1385

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[2] In *People v. Fuentes* (2016) 1 Cal.5th 218, the California Supreme Court recently held that section 186.22, subdivision (g) does not eliminate a trial court's discretion under section 1385 to dismiss a section 186.22 sentencing enhancement allegation for a gang-related offense. (*Fuentes*, at pp. 221-222.) Section 186.22, subdivision (g) provides: "Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section . . . where the interests of justice would best be served . . . ." The Supreme Court said a trial court's dismissal authority is broader under section 1385. (*Fuentes*, at pp. 224-225.) Whereas a trial court can dismiss a sentencing enhancement allegation under section 1385, a trial court's discretion under section 186.22, subdivision (g) is limited to striking the additional punishment for the enhancement. (*Fuentes*, at pp. 224-225.) The distinction is significant because an

may be proper before, during, or after trial. (*People v. Hatch* (2000) 22 Cal.4th 260, 268.) Unlike a dismissal under section 1203.4, "[t]he effect of a dismissal under section 1385 is to wipe the slate clean as if the defendant never suffered the prior conviction in the initial instance. In other words, '[t]he defendant stands as if he had never been prosecuted for the charged offense. (*People v. Simpson* (1944) 66 Cal.App.2d 319, 329.)' (*People v. Superior Court (Flores)* (1989) 214 Cal.App.3d 127, 136 [(*Flores*)].)" (*People v. Barro* (2001) 93 Cal.App.4th 62, 67.)

A trial court's discretionary power to dismiss an action under section 1385 has been recognized by statute since 1850. (Stats. 1850, ch. 119, § 629, p. 323.) With slight changes, the provision became section 1385 when the Penal Code was enacted in 1872.[3] (*Williams, supra*, 30 Cal.3d at p. 478.)

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enhancement finding may impact a defendant in a future case even if the punishment for the enhancement is struck. (*Id.* at p. 225.) The Supreme Court did not find in the language of section 186.22 the clear legislative direction necessary to abrogate a trial court's discretion under section 1385. (*Fuentes*, at p. 231.) The conclusion in this case is different. Here, sections 1203.4 and 1385 both authorize the dismissal of an action. (§§ 1203.4 subd. (a)(1), 1385, subd. (a).) As we will explain, the original section 1203.4 also had the same restorative effect as section 1385. And an examination of the language and history of the two statutes demonstrates clear legislative intent to eliminate section 1385 discretion in cases where section 1203.4 applies.

[3] "In 1851, the phrase 'after indictment' was changed to 'or indictment.' (Stats. 1851, ch. 29, § 597, p. 279.) The 1872 version read, 'The Court may, either of its own motion or upon the application of the District Attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.' In 1951, 'Court' became 'court,' 'District Attorney' was changed to 'prosecuting attorney,' the phrase 'or indictment' was dropped, and the third sentence was added. (Stats. 1951, ch. 1674, § 141, p. 3857.) In 1980, 'judge or magistrate' was substituted for 'court.' (Stats. 1980, ch. 938, § 7, p. 2968.)" (*People v. Williams* (1981) 30 Cal.3d 470, 478, fn. 5 (*Williams*), superseded by statute on another point as noted in *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 348.) In 1986, the existing provision became subdivision (a) and subdivision (b) was added to restrict the authority of the trial court to strike prior convictions of serious felonies when imposing an enhancement under section 667. (*People v. Valencia* (1989) 207 Cal.App.3d 1042, 1045.) In 2000, subdivision (c) was added to give the court authority to "strike the

The judicial authority to dismiss a criminal action or allegation in furtherance of justice is statutory and may be withdrawn by the Legislature. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504, 518.) A court may exercise such authority unless, in a given context, the Legislature has clearly evidenced a contrary intent. (*Williams, supra,* 30 Cal.3d at p. 482; *Thomas, supra,* 4 Cal.4th at p. 211.) Courts will not interpret another statute as eliminating the power to dismiss under section 1385 unless there is clear legislative direction to that effect. (*Romero,* at p. 518.) But the Legislature can provide such clear direction without expressly referring to section 1385. (*Romero,* at p. 518.)

People v. Tanner (1979) 24 Cal.3d 514, 518 (*Tanner*) shows how the Legislature can provide clear direction without mentioning section 1385. That case involved section 1203.06, a statute specifying, among other things, that probation shall not be granted to a person who personally uses a firearm during the commission of a robbery. (§ 1203.06, subd. (a)(1)(B).) The California Supreme Court considered whether a trial court could use section 1385 to strike a firearm allegation and thereby avoid the mandatory prohibition in section 1203.06. (*Tanner, supra,* 24 Cal.3d at p. 518.) The Court said no, the mandatory provisions of section 1203.06 could not be avoided by employing section 1385. (*Tanner,* at p. 519.) To hold otherwise would nullify section 1203.06 and restore prior law allowing a trial court to grant probation anytime it deemed such a grant appropriate in the interests of justice. (*Tanner*, at pp. 519-520.) The Court observed that "whereas section 1385 is general in nature, relating to the broad scope of dismissal, section 1203.06 is specific, relating to the limited power of dismissal for purposes of probation -- the very matter at issue." (*Tanner*, at p. 521.) In addition, section 1203.06 is "the later enactment, adopted by the Legislature in response to the particular problem at

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additional punishment" for an enhancement provided the court "has the authority pursuant to subdivision (a) to strike or dismiss [such] enhancement." (Stats. 2000, ch. 690, § 3.)

hand. A specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates." (*Tanner*, at p. 521; See *People v. Rodriguez* (1986) 42 Cal.3d 1005, 1019 [confirming continuing validity of *Tanner*])

Like section 1203.06, what is now section 1203.4 was enacted after section 1385 and is more specific. (Stats. 1909, ch. 232, § 1, p. 359) Section 1203.4 was paragraph 5 to the original section 1203, a statute directed at the subject of probation. (Stats. 1905, ch. 166, § 1, pp. 162-164; Stats. 1909, ch. 232, § 1, p. 359.) In contrast, section 1385 is a general statute "relating to the broad scope of dismissal." (*Tanner, supra,* 24 Cal.3d at p. 521.) Section 1385 does not reference probation. Section 1203.4 relates to "the limited power of dismissal for purposes of probation -- the very matter at issue." (*Tanner,* at p. 521.)

Section 1203.06 involves a particular prohibition not present in section 1203.4. But like the probation statute in *Tanner, supra*, 24 Cal.3d 514, the original section 1203.4 contained mandatory terms. (Stats. 1909, ch. 232, § 1, p. 359; see also *People v. Field* (1995) 31 Cal.App.4th 1778, 1788 [probationer who fulfills the conditions of probation for the entire period of probation or who has been discharged before the termination of the probationary term is entitled as a matter of right to expungement of the conviction]; *Johnson, supra,* 134 Cal.App.2d at p. 144 [interpreting the word "shall" in section 1203.4 as mandatory].) It required dismissal of the accusation or information when the conditions for relief were present. (Stats. 1909, ch. 232, § 1, p. 359.)[4]

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[4] The original version of section 1203.4 provided, "Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time prior to the expiration of the maximum period of punishment for the offense of which he has been convicted, dating from said discharge from probation or said termination of said period of probation, be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court shall set

Moreover, dismissal of an accusation or information under the original section 1203.4 had the same effect as a dismissal under section 1385. (*People v. Mackey* (1922) 58 Cal.App. 123, 130-131; *Flores, supra,* 214 Cal.App.3d at p. 136.) A defendant was released "from all penalties and disabilities resulting from the offense or crime of which he [or she] has been convicted." (Stats. 1909, ch. 232, § 1, p. 359.) The Legislature intended the original version of section 1203.4 "to wipe out absolutely the entire proceeding in question in a given case and to place the defendant in the position which he would have occupied in all respects as a citizen if no accusation or information had ever been presented against him. Such is the legal effect of the dismissal of a criminal charge before conviction, and . . . the lawmaking body intended, by [paragraph 5 of] section 1203, that the same effect should attend a dismissal after conviction." (*Mackey, supra,* 58 Cal.App. at pp. 130-131; see *In re Disbarment of Herron* (1933) 217 Cal. 400 (*Herron*) [dismissal of action under then section 1203 released the defendant from all penalties and disabilities resulting from the conviction], disapproved on another point in *In re Phillips* (1941) 17 Cal.2d 55, 59-60.)

The Legislature could not have intended to preserve the court's discretionary power to dismiss under section 1385 when it mandated dismissal in a later-enacted statute with the same restorative effect that specifically addressed the dismissal of accusations or an information against a successful probationer. (*Thomas, supra,* 4 Cal.4th at p. 213 [the Legislature intended to preclude exercise of power under section 1385 when exercise of such power could effectively negate a later-enacted and more specific statute]; *Tanner, supra,* 24 Cal.3d at pp. 519-520.) A contrary interpretation would nullify the original section 1203.4. "Under well-established rules of construction, any inconsistency between

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aside the verdict of guilty and the court shall thereupon dismiss the accusation or information against such defendant who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted." (Stats. 1909, ch. 232, § 1, p. 359.)

the two provisions would be resolved by applying the more specific provision." (*Thomas, supra*, 4 Cal.4th at p. 213.)

The 1971 amendment of section 1203.4 supports our conclusion. That year the Legislature expanded the class of defendants who might obtain section 1203.4 relief to include those who did not successfully complete probation but who should be granted relief in the court's discretion and in the interests of justice. (Stats. 1971, ch. 333, § 1, p. 667; *People v. McLernon* (2009) 174 Cal.App.4th 569, 576-577; see *Mgebrov, supra*, 166 Cal.App.4th at p. 587 [the 1971 amendment gave the courts considerable flexibility in their application of the statute].) It would not have been necessary for the Legislature to amend section 1203.4 to authorize a court to dismiss "in its discretion and the interests of justice" if courts had retained authority to dismiss "in furtherance of justice" under section 1385 after the Legislature enacted the original section 1203.4.

Other California Supreme Court cases also support our conclusion that section 1203.4, and not section 1385, governs dismissal in a case where the defendant is granted probation and seeks dismissal after the expiration of the probationary period. *Herron, supra,* 217 Cal. 400, involved a proceeding to disbar an attorney. One issue before the Supreme Court was whether a trial court could set aside a conviction and dismiss an action after expiration of the probation period. (*Id.* at p. 405.) The Supreme Court ruled that the power to dismiss an action in that circumstance was found in the original version of section 1203.4. (*Herron,* at p. 405; see also *People v. Behrmann* (1949) 34 Cal.2d 459, 462, fn. 1 [citing section 1203.4 and stating that the court's power to vacate the judgment and dismiss the cause after probation is fulfilled depends on the statutory procedure].) The Supreme Court did not say section 1385 gave the trial court the power to dismiss after a defendant completed probation.

Likewise, in *In re Phillips, supra*, 17 Cal.2d 55, another attorney disbarment case, the Supreme Court once again acknowledged that section 1203.4 established the authority of a trial court to set aside the verdict after satisfactory completion of probation. (*In re*

Phillips, supra, 17 Cal.2d at p. 59.) Moreover, in *Banks, supra,* 53 Cal.2d 370, the Court again referenced section 1203.4 as the statutory basis for dismissing a case when a defendant successfully completed probation. (*Banks*, at pp. 384-388, 391; see also *Stephens, supra,* 51 Cal.2d at pp. 870-871.)

The Court of Appeal in *People v. Barraza* (1994) 30 Cal.App.4th 114 reached a similar conclusion, stating that section 1203.4 is the only statutory avenue available for an adult convicted of a felony and placed on probation rather than sentenced to prison. (*Barraza*, at p. 120; see also Comment, *Expungement in California: Legislative Neglect and Judicial Abuse of the Statutory Mitigation of Felony Convictions* (1977) 12 U.S.F. L.Rev. 155, 166 (Comment) ["With the single and rare exception of pardon, section 1203.4 is the only statutory enactment that presumptively relieves the legal and collateral disabilities of a felony conviction."].)

In addition, the amendatory history of section 1203.4 discloses a continuing legislative intent, based on public safety and other considerations, to limit a court's authority (like it might otherwise have under section 1385) to wipe a probationer's slate clean or even free the probationer from certain penalties and disabilities. (*People v. Ansell* (2001) 25 Cal.4th 868, 879-880; *Tanner, supra,* 24 Cal.3d at p. 519; Comment, *supra*, 12 U.S.F. L.Rev. at pp.167-172.) Starting in 1927, the Legislature narrowed the ameliorative effect of a dismissal under section 1203.4 so that section 1203.4 no longer renders the prior conviction a legal nullity. (Compare § 1203.4 with Stats. 1909, ch. 232, § 1, p. 359; see also *People v. Vasquez* (2001) 25 Cal.4th 1225, 1230-1231.) The 1927 amendment provided that "in any subsequent prosecution of such defendant for any other offense such prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed." (Stats. 1927, ch. 770, § 1, p. 1496.) That amendment stripped the defendant of all the privileges and rights restored under the original statute, and provided that if the defendant committed a second offense, he or she forfeited all the remaining rights and benefits

restored when the information was dismissed. (*People v. Majado* (1937) 22 Cal.App.2d 323, 325.)

The 1961 amendment to section 1203.4 provides that dismissal under the statute does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person, and does not prevent conviction under section 12021. (Stats. 1961, ch. 1735, § 1, p. 3744.) Pursuant to the 1978 amendment, dismissal under section 1203.4 does not affect the revocation or suspension of the defendant's privilege to drive a motor vehicle. (Stats. 1978, ch. 911, § 1, p. 2870; Veh. Code, § 13555.) The 1979 and 1989 amendments indicate dismissal under the statute does not relieve the defendant of the obligation to disclose the prior conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency, or for contracting with the California State Lottery. (Stats. 1979, ch. 199, § 6, p. 444; Stats. 1989, ch. 917, § 11, p. 3190.) The 2005 amendment provides that, except as provided in section 290.5, dismissal under the statute does not relieve a person of the duty to register as a sex offender under section 290. (Stats. 2005, ch. 704, § 3, p. 5629.) Under the 2008 amendment, dismissal does not permit a person to hold public office who is otherwise barred. (Stats. 2008, ch. 94, § 1.) And consistent with the foregoing amendments, cases have held that section 1203.4 does not bar use of a prior conviction in licensee disciplinary proceedings. (See, e.g., *Meyer v. Board of Medical Examiners* (1949) 34 Cal.2d 62, 67; *Copeland v. Department of Alcoholic Beverage Control* (1966) 241 Cal.App.2d 186, 188.) As this review of the amendatory history demonstrates, it would nullify the restrictions imposed by the Legislature and interpreted by the courts if we were to construe the statutes as preserving a trial court's discretion under section 1385 to completely erase a probationer's conviction.

The cases cited by defendant in support of his position are inapposite. There is no indication in *People v. Orabuena* (2004) 116 Cal.App.4th 84 that the defendant had

completed probation and was eligible for relief under section 1203.4. (*Orabuena*, at p. 89.) That decision does not discuss dismissal under section 1203.4. Moreover, the defendant in *People v. Kim* (2012) 212 Cal.App.4th 117 was sentenced to three years in prison and sought relief under section 1385 years after he was released on parole. (*Kim*, at pp. 119-121.) He was not granted probation on the conviction he invited the trial court to dismiss pursuant to section 1385. (*Kim*, at pp. 119-121.) The court in *Kim* did not discuss dismissal under section 1203.4.

In cases involving a request for dismissal of accusations or an information against a defendant after the period of probation has ended, the Legislature has provided clear legislative direction that the courts do not have authority under section 1385 to grant the requested relief. Section 1203.4 is the exclusive method by which a court can dismiss the conviction of a defendant who has successfully completed probation. Accordingly, the trial court properly concluded it was without discretion to dismiss defendant's conviction under section 1385.

DISPOSITION

The judgment is affirmed.

/S/
MAURO, J.

We concur:

/S/
RAYE, P. J.

/S/
BUTZ, J.

DECLARATION OF SERVICE BY MAIL

Re: ***People v. Lorenzo Chavez*** **Court of Appeal Case No. C074138**

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of San Francisco, State of California. My business address is 1000 Brannan Street, Suite 400, San Francisco, CA 94103. On December 12, 2016, I have caused to be served a true copy of the attached **Petition for Review** (except for copies of the opinion [Rule 8.500(e)(f)] on each of the following, by placing same in an envelope(s) addressed as follows:

Kamala D. Harris
Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550
Attorney for Respondent
Via e-filing

Yolo County District Attorney
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Yolo County Superior Court
Attn. Hon. Stephen L. Mock
725 Court Street
Wooldand, CA 95695

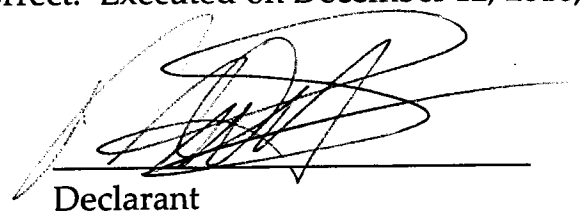
Third District Court of Appeal
Via e-filing

Lorenzo Chavez

(petitioner)(via email)

Each said envelope was sealed and the postage thereon fully prepaid. I am familiar with this office's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice each envelope would be deposited with the United States Postal Service in San Francisco, California, on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 12, 2016, at San Francisco, California.



Declarant