In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

WILLIAM FREDERICK MAULTSBY,

Defendant and Appellant.

Case No. S182042

Third Appellate District, Case No. C060532
Yolo County Superior Court, Case No. 08868
The Honorable Thomas Edward Warriner, Judge

RESPONDENT'S BRIEF ON THE MERITS

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ISSUE PRESENTED

Was appellant required to obtain a certificate of probable cause to raise a claim on appeal that his admissions of prior conviction allegations were not knowingly and intelligently made, even though he was convicted by jury of the underlying offense? (See Pen. Code, § 1237.5; *People v. Fulton* (2009) 179 Cal.App.4th 1230.)[1]

STATEMENT OF THE CASE

On May 22, 2008, the district attorney filed an information in the Yolo County Superior Court charging appellant, William Frederick Maultsby, with petty theft of retail merchandise with a prior conviction (§§ 484, subd. (a), 490.5, subd. (a), 666). (CT 29-31.) The information also alleged that he had been previously convicted six times of offenses involving theft in 1991, 1998, 1999, 2000, 2001, and 2002. (*Ibid.*) The information further alleged that appellant had been previously convicted of a serious felony for robbery (§ 211) within the meaning of section 667, subdivisions (c) and (e)(1). (§§ 667, subd. (d), 667.5, subd. (c), and § 1192.7, subd. (a).) (CT 30.) On May 23, 2008, appellant was arraigned, pled not guilty, and denied the allegations. (CT 32.)

At pretrial proceedings on July 21, 2008, the court granted appellant's motion to bifurcate the alleged prior serious felony enhancement. (CT 37.) Appellant agreed to admit the alleged prior convictions, so that the information could be modified to charge him with simple petty theft, rather than petty theft with a prior. (CT 38, 58.) Thereafter, appellant admitted

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[1] Unless otherwise designated, all further statutory references are to the Penal Code.

the priors, including the strike prior, as alleged in the information, and the court modified count I, as agreed to by the parties. (*Ibid.*)

On July 22, 2008, a jury found appellant guilty of petty theft in violation of section 484. (CT 55, 57, 77.) On November 20, 2008, the court sentenced appellant to the low term of 16 months in state prison for petty theft of retail merchandise with a prior conviction (§§ 484, subd. (a), 490.5, subd. (a), 666), doubled to 36 months pursuant to section 667, subdivisions (c) and (e)(1). (CT 99, 102, 114.) Appellant filed a timely notice of appeal on November 26, 2008, case No. C060532. (CT 115-116.)

On March 16, 2010, the Court of Appeal, Third Appellate District, dismissed the appeal because appellant failed to obtain a certificate of probable cause (§ 1237.5). Appellant filed a petition for review in this Court on April 22, 2010. This Court granted the petition on June 30, 2010.

STATEMENT OF FACTS

On January 13, 2008, appellant walked out of a Wal-Mart store in West Sacramento and activated theft detectors located at the general merchandise exit of the store. (RT 47-53.) Security then approached appellant. (RT 53-54.) Whereupon, appellant reached inside his jacket and removed a package of nicotine gum. (RT 53, 55.) Appellant failed to present a receipt for the gum. (RT 57-58, 63-64.) The security officer asked appellant to walk through the sensors again. (RT 55-56.) Appellant complied, and the alarm sounded again. (*Ibid.*) After setting off the alarm a second time, appellant reached back into his jacket and pulled out another packet of nicotine gum. (RT 55.) Appellant was cited for shoplifting. (RT 72-75.) Both packets of nicotine gum were Wal-Mart merchandise shelved near the front door, with a total retail value of $83.56. (RT 58.)

SUMMARY OF ARGUMENT

Although the plain language of section 1237.5 does not discuss whether a certificate of probable cause is required to challenge an admission of a prior conviction allegation preceding a jury trial as part of a negotiated bargain, the Legislature intended the certificate of probable cause requirement to apply in such a case. The Legislature did not intend to permit defendants to admit prior convictions, and then challenge those admissions on appeal, without first obtaining a certificate of probable cause, regardless of whether a jury trial was had on the underlying offenses. Appellant was required to obtain a certificate of probable cause because a claim that his admission regarding the prior conviction allegation was not knowingly and intelligently made challenged the validity of his plea, and is subject to the requirements of section 1237.5. This Court should uphold the Court of Appeal, Third District, opinion in *People v. Fulton*, *supra*, 179 Cal.App.4th 1230, which was correctly decided.

ARGUMENT

I. PENAL CODE SECTION 1237.5 APPLIES TO A PRIOR CONVICTION ENHANCEMENT ALLEGATION TO WHICH A DEFENDANT HAS ENTERED A PLEA; APPELLANT COULD NOT ATTACK THE VALIDITY OF HIS ADMISSION OF A PRIOR PRISON TERM ALLEGATION WITHOUT FIRST OBTAINING A CERTIFICATE OF PROBABLE CAUSE

Appellant argues that the plain language of section 1237.5 refers only to appeals taken from pleas of guilty or no contest, and does not include or mention admissions to sentencing allegations. Appellant claims that his plea to a sentencing enhancement, based on a prior conviction before trial by jury on the underlying charges, was governed by section 1237, which did not require him to obtain a certificate of probable cause. Appellant further alleges that the Court of Appeal's interpretation of section 1237.5 in

People v. Fulton, supra, 179 Cal.App.4th 1230, is contrary to this Court's prior findings regarding the legislative intent of the statute, and that the legislative intent behind section 1237.5 supports not imposing the certificate of probable cause requirement in cases where there is a jury trial on the underlying charges. (AOB 5-21.)

Respondent agrees that the plain language of section 1237.5 does not specifically mention admissions of prior convictions or sentencing enhancements. However, the legislative intent and prior case law support applying the certificate of probable cause requirement in cases where a defendant enters a negotiated agreement to admit a prior conviction in exchange for modification of the charges or other benefit, and then seeks to challenge that admission on appeal.

A. Legislative History of Section 1237.5

Examination of the legislative intent and history behind section 1237.5, shows that the Legislature's failure to expressly include language imposing section 1237.5's requirements to challenges to admissions of prior convictions was inadvertent. The Legislature did not intend to permit defendants to admit prior convictions, and then challenge those admissions on appeal without first obtaining a certificate of probable cause, regardless of whether a jury trial was had on the underlying offenses.

The term "certificate of probable cause" was originally used in section 1243 from the time of its enactment in 1872, until amendment in 1927, in cases requiring a certificate of probable cause for stay of execution of judgment pending appeal. (See *People v. Mooney* (1918) 178 Cal. 525, 526-530; *In re Adams* (1889) 81 Cal. 163, 164.) This Court held in *People v. Durrant* (1897) 119 Cal. 54, that a certificate of probable cause may be issued upon an appeal by a defendant from an order made after the judgment. (*Id.* at pp. 55-56.) The term continued to be used and was deemed to be "all its effect is substantially the equivalent of an order

staying execution." (*People v. Nevarez* (1962) 211 Cal.App.2d 347, 350-352.)

Section 1237.5 was originally enacted in 1965, by Assembly Bill 1976. (Stats. 1965, ch. 1924, § 2, p. 4445.) It was introduced by then Assembly Member C. George Deukmejian on March 23, 1965. Assembly Member Deukmejian wrote a letter to Governor Edmund. G. Brown, explaining the purpose and intent behind section 1237.5. Assembly Member Deukmejian advised:

> It is presently a common and in face almost general practice for defendants in criminal cases who had been represented by counsel and plead guilty to thereafter file Notices of Appeal - - most often in pro per.
>
> When these are filed the following occur[s]:
>
> 1. Clerk's and reporter's transcripts are prepared and filed.
>
> 2. Attorney General files a motion to dismiss the appeal.
>
> 3. District Court has to employ an attorney to represent the defendant.
>
> It is a long, wholly ineffectual expensive process at public expense without benefit to anyone.
>
> To stop this expensive abuse of process, this bill provides that no appeal shall lie from a plea of guilty or nolo contendere excepting where:
>
> 1. The defendant under oath or under penalty of perjury has filed with the trial court a written statement showing reasonable, constitutional, jurisdictional or other grounds going to the legality of the proceedings; and
>
> 2. When the trial court has executed and filed a Certificate of Probable Cause for such appeal.
>
> This bill was suggested by a Superior Court Judge of Los Angeles County. There was no opposition to the bill before any of the committees.

(Deukmejian, Letter to Governor Edmund. G. Brown, June 8, 1965.)

The original language proposed by Assembly Member Deukmejian applied only to guilty pleas, and did not specifically include pleas of nolo contendere, which was added in the Senate. The addition of pleas of nolo contendere to expand the scope of proposed section 1237.5, shows the Legislature's desire to make the certificate requirement applicable to a broader class of cases involving largely frivolous appellate claims. The Legislature's inclusion of pleas of nolo contendere implemented section 1237.5's goal of reducing court costs by eliminating frivolous and vexatious claims following pleas.

The language of section 1237.5, as enacted in 1965, provided:

> No appeal shall be taken by defendant from a judgment of conviction upon a plea of guilty or nolo contendere, except where:
>
> (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings; and
>
> (b) The trial court has executed and filed a certificate of probable cause for such appeal with the county clerk.

The statute was subsequently amended in 1976 to add the language "or a revocation of probation following an admission of violation," in the introductory clause. (Stats. 1976, ch. 1128, § 1 (S.B. 1820).) The Senate Judiciary Committee notes state the purpose of this amendment was to, "Conform the right of appeal following an admission of a probation violation to that following a plea of guilty or nolo contendere." The Committee notes further explain,

> An appeal may not be taken upon a plea of guilty or nolo contendere in the usual case because the defendant has admitted the commission of the offense. However, there is no prohibition against taking an appeal after the revocation of probation

following an admission of violation, even though the defendant has admitted the violation upon which the revocation is based.

This bill eliminates the right of appeal in the case of such a probation revocation to eliminate this inconsistency.

A bill report from the Governor's Office notes, "Appeals following admitted violations are generally without merit and result in an unnecessary burden upon the courts and the criminal justice system in general. By requiring the court to issue a certificate, only those appeals which are meritorious on their face will be allowed." (Governor's Office, Department of Legal Affairs, Enrolled Bill Report SB 1820, August 27, 1976.) The addition of this language expanding the scope of section 1237.5 further demonstrates the Legislature's desire to have the law more widely applicable to all claims challenging admissions.

On February 18, 1988, Assembly Member Elihu Harris introduced Assembly Bill 3889 proposing to repeal section 1237.5 in its entirety. Assembly Member Harris sought to eliminate the requirement that a criminal defendant obtain a certificate of probable cause for appeal as a prerequisite to filing an appeal. (Assembly Committee on Public Safety notes on May 2, 1988.) Harris explained that although section 1237.5 was intended to weed out frivolous appeals, in practice courts had used a variety of theories to circumvent the certificate requirement. Harris concluded that the certificate requirement had been unsuccessful at weeding out frivolous appeals, and that elimination of the requirement would simplify criminal appellate procedures and reduce the workload of appellate courts throughout the state. (*Ibid.*)

The bill was subsequently modified in session to temporarily amend section 1237.5 to remove the requirement that the trial court execute and file the certificate of probable cause with the county clerk. (Stats. 1988, ch.

851 (A.B. 3889).) The 1988 amendment eliminated the trial court screening procedure. The amended section provided:

> No appeal shall be taken by defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where the defendant has filed as part of the notice of appeal a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.

The amended section was to remain in effect until January 1, 1992, unless the sunset was lifted or extended. The legislative committee notes explain that the reason for the sunset date was to allow the change to be reviewed to ascertain its impact and determine whether it should be continued.

From 1989 through 1991, Section 1237.5 did not require the defendant to obtain a certificate of probable cause from the trial court, but instead only required the defendant to file a statement with the notice of appeal showing the grounds affecting the legality of the plea. This gave the task of winnowing out frivolous appeals after a guilty or no contest plea to the appellate court.

Since the sunset was not lifted or extended, the trial court function of screening by applying section 1237.5 was reinstated in 1992. (Stats. 1988, ch. 851, § 2, operative January 1, 1992.) As in its 1965 enactment, after 1992, defendants were again required to both file a written statement and the trial court was required to execute a certificate of probable cause for the appeal.

The statute was again amended in 2002. (Stats. 2002, ch. 784, § 550 (S.B. 1316).) The 2002 amendment simply added the words "of the court" to subdivision (b), which eliminated the county clerk's role as ex officio clerk of the superior court. Accordingly, the current language of section 1237.5 provides:

> No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met:
>
> (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.
>
> (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.

B. Section 1237.5 Applies to Cases Where a Defendant Admits a Prior Conviction Allegation, and Subsequently Challenges that Admission on Appeal, Even Where He was Convicted by a Jury of the Underlying Offense

A defendant may not appeal "from a judgment of conviction upon a plea of guilty or nolo contendere," unless he has obtained a certificate of probable cause. (§ 1237.5; *People v. Cuevas* (2008) 44 Cal.4th 374, 379; *People v. Buttram* (2003) 30 Cal.4th 773, 790.) Exempt from this certificate requirement are post-plea claims, including sentencing issues that do not challenge the validity of the plea. (Cal. Rules of Court, rule 8.304(b)(4)(B); *People v. Shelton* (2006) 37 Cal.4th 759, 766; *People v. Buttram*, *supra*, 30 Cal.4th at p. 776; *People v. Panizzon* (1996) 13 Cal.4th 68, 74-75.)

> It has long been established that issues going to the validity of a plea require compliance with section 1237.5. Thus, for example, a certificate must be obtained when a defendant claims that a plea was induced by misrepresentations of a fundamental nature or that the plea was entered at a time when the defendant was mentally incompetent. Similarly, a certificate is required when a defendant claims that warnings regarding the effect of a guilty plea on the right to appeal were inadequate.
>
> ¶ . . .

> In determining whether section 1237.5 applies to a challenge of a sentence imposed after a plea of guilty or no contest, courts must look to the substance of the appeal: "the crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made." Hence, the critical inquiry is whether a challenge to the sentence is in substance a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5.

(*Panizzon,* at p. 76, citations omitted.)

The requirement of a certificate of probable cause is intended "'to promote judicial economy' [citation] 'by screening out wholly frivolous guilty [and no contest] plea appeals before time and money are spent' on such matters as the preparation of the record on appeal [citation], the appointment of appellate counsel [citation], and, of course, consideration and decision of the appeal itself." (*In re Chavez* (2003) 30 Cal.4th 643, 651, citing *People v. Mendez* (1999) 19 Cal.4th 1084, 1095, *People v. Panizzon, supra*, 13 Cal.4th at pp. 75-76, and *People v. Hoffard* (1995) 10 Cal.4th 1170, 1179.) Section 1237.5's purpose is "to weed out frivolous and vexatious appeals from pleas of guilty or no contest, before clerical and judicial resources are wasted." (*People v. Buttram, supra*, 30 Cal.4th at p. 790.)

> "The purpose and effect of section 1237.5 . . . are . . . to create a mechanism for trial court determination of whether an appeal raises any nonfrivolous cognizable issue, i.e., any nonfrivolous issue going to the legality of the proceedings. Before the enactment of section 1237.5, the mere filing of a notice of appeal required preparation of a record and, in many cases, appointment of counsel; only after expenditure of those resources would an appellate court determine whether the appeal raised nonfrivolous issues that fell within the narrow bounds of cognizability. Section 1237.5 was intended to remedy the unnecessary expenditure of judicial resources by preventing the prosecution of frivolous appeals challenging convictions on a plea of guilty."

(*People v. Johnson* (2009) 47 Cal.4th 668, 676, citing *Hoffard*, at p. 1179.)

The trial court must issue the certificate if the defendant's statement under section 1237.5 presents "any cognizable issue for appeal which is not clearly frivolous and vexatious." (*People v. Holland* (1978) 23 Cal.3d 77, 84; see also *People v. Ribero* (1971) 4 Cal.3d 55, 63, fn.4.) The defendant's statement need not list every potential issue; if the trial court issues the certificate based on even a single nonfrivolous claim, the defendant may raise all of his or her claims on appeal, including those that require a certificate as well as those that do not, even if they were not identified in the statement filed with the trial court. (*People v. Hoffard, supra*, 10 Cal.4th at pp. 1177-1180.) If the trial court wrongfully refuses to issue a certificate, the defendant may seek a writ of mandate from the appellate court. (*People v. Holland, supra*, 23 Cal.3d at p. 84, fn.6; *In re Brown* (1973) 9 Cal.3d 679, 683.)

California Rules of Court, rule 8.304(b)(1), provides, "[T]o appeal from a superior court *judgment* after a plea of guilty or nolo contendere or after an admission of probation violation, the defendant must file in that superior court with the notice of appeal required by (a)--the statement required by Penal Code section 1237.5 for issuance of a certificate of probable cause." (Emphasis added.) The certificate of probable cause requirement is not limited to cases where there was no jury trial on any of the charges or allegations. Rather, the rule imposes the certificate requirement in cases where a judgment is entered after an admission is made by the defendant. There is no rule barring application of the certificate of probable cause requirement to cases where a defendant admitted a prior conviction allegation, but was convicted by jury on the underlying offense, and then challenges his admission on appeal.

Courts have consistently treated pleas to underlying charges and admissions of prior convictions the same. Where a defendant pleads guilty, he is convicted by his plea. (*People v. Goldstein* (1867), 32 Cal. 432, 433.)

A plea of guilty constitutes a conviction. (*Stephens v. Toomey* (1959), 51 Cal.2d 864, 869; *People v. Jones* (1959) 52 Cal.2d 636, 651; *People v. Hickman* (1928), 204 Cal. 470, 483.)

> A plea of guilty is an admission of every element of the offense charged and is a conclusive admission of guilt. Such a plea is the equivalent of a verdict of a jury. After a plea of guilty, it is unnecessary to take any evidence on any of the elements of the crime charged.

(*People v. McDaniels* (1958) 165 Cal.App.2d 283, 284-285, citations omitted.)

The same is true for admissions of prior convictions. Even preceding the enactment of section 1237.5, courts recognized that a defendant's admission of a prior conviction constitutes a conclusive admission of guilt and a conviction on the enhancement. Normally, the prosecution must prove alleged priors beyond a reasonable doubt. (*People v. Morton* (1953) 41 Cal.2d 536, 539; *In re McVickers* (1946) 29 Cal.2d 264, 278.) There is no such burden as to priors which are admitted. (*In re Gilliam* (1945) 26 Cal.2d 860, 866; *People v. Dawson* (1930) 210 Cal. 366, 372-373.) When a defendant admits prior convictions, there is no requirement that the prosecution produce evidence of the nature of the convictions. (*In re Norcutt* (1948) 31 Cal.2d 743, 744; *People v. McConnell* (1948) 86 Cal.App.2d 578, 580-581; *People v. De Soto* (1939) 33 Cal.App.2d 478, 481.) Thus, while ordinarily the prosecution must defend and affirmatively show the validity of those priors which the defendant claims are invalid for constitutional or other reasons, with an admission, validity is not an issue, either at trial or on appeal.

Admissions and pleas are frequently treated the same under the law. In 1970, the United States Supreme Court recognized that California's treatment of an admission of prior convictions as a waiver of various rights places such an admission on a par with pleas of guilty, which if knowingly

and voluntarily made worked as a forfeiture of a vast range of rights, procedural and substantive. (*Brady v. United States* (1970) 397 U.S. 742, 748.) This Court subsequently held that an admission of a prior offense is deemed tantamount to a "guilty plea for purposes of waiver of an accused's rights," reasoning as follows:

> Because of the significant rights at stake in obtaining an admission of the truth of allegations of prior convictions, which rights are often of the same magnitude as in the case of a plea of guilty, courts must exercise a comparable solicitude in extracting an admission of the truth of alleged prior convictions. Although the issue was not before the Supreme Court in Boykin nor before us in Tahl, it is nevertheless manifest that an accused is entitled to be advised of those constitutional rights waived by him in making such an admission.

(*In re Yurko* (1974) 10 Cal.3d 857, 862-863.)

In fact, the words "plea" and "admission" are sometimes used interchangeably. For example, California Rules of Court, rule 5.778, provides, "On an admission or plea of no contest, the court shall make the following findings noted in the minutes of the court . . . (5) The admission or plea of no contest is freely and voluntarily made; (6) There is a factual basis for the admission or plea of no contest." (Cal. Rules of Court, rule 5.778(f)(5)-(6); see also *People v. Yeoman* (2003) 31 Cal.4th 93, 138; *People v. Walker* (1991) 54 Cal.3d 1013, 1023, citing *In re Ronald E.* (1977) 19 Cal.3d 315, 321.) A defendant makes admissions during the plea bargaining process. Ultimately, he or she will enter a "plea" to an underlying charge and "admit" or "deny" a prior conviction allegation, but in either case, the defendant engages in the same act, admitting or denying a charge.

In *People v. Perry* (1984) 162 Cal.App.3d 1147, the Court of Appeal, Second Appellate District, correctly held that, "an appeal which questions proceedings before appellant's admission of [an enhancement] must

comply with section 1237.5." (*Id.* at p. 1151.) *Perry*'s determination that an admission to an enhancement requires a certificate of probable cause did not hinge on whether the defendant had also pled to the main charge. In fact, *Perry* aptly pointed out that the requirements of section 1237.5 should apply to admissions of enhancements because, like other charges, a defendant is entitled to a jury trial on additional enhancements. (*Id.* at p. 1152, fn. 3.)

> As noted, section 1237.5 applies to an appeal from a judgment of conviction upon a plea of guilty. A defendant can plead guilty to a main charge, and yet have a trial on an additional allegation, such as enhancement of sentence for "use" of a firearm [citation], or enhancement for being "armed" [citation]. The trial regarding the enhancements could then be reviewed without a certificate of probable cause because it would be contested, there would be a record, and the appeal would not be attacking the validity of a plea of guilty regarding the enhancements.

(*Ibid.*; see also *People v. Lobaugh* (1987) 188 Cal.App.3d 780, 785.)

In *People v. Fulton*, *supra*, 179 Cal.App.4th 1230, the Court of Appeal, Third Appellate District, held that a defendant who entered a plea to a prior prison term allegation was required to obtain a certificate of probable cause in order to challenge his plea on appeal. A jury convicted the defendant in *Fulton* on the underlying charges. Then in a bifurcated proceeding, the defendant entered a negotiated admission to a prior prison term allegation in exchange for dismissal of the remaining allegations. (*Id.* at p. 1232.) As is the case here, the defendant in *Fulton* sought to raise the claim that he did not knowingly and intelligently waive his right against self-incrimination and right to confrontation when he admitted the prior prison term allegation. (*Id.* at p. 1234.) On appeal, the defendant argued that a certificate of probable cause was not required to raise this issue because "the judgment of conviction resulted from a jury verdict and not a guilty or no contest plea." (*Id.* at p. 1235.) The Court of Appeal concluded

that the defendant's failure to obtain a certificate of probable cause in order to challenge a procedural irregularity in the entry of his plea to the prior prison term allegation rendered the issue noncognizable on appeal. (*Ibid.*)

The Court of Appeal cited *Perry* and refused to draw a literal, technical distinction between "admission" of an enhancement and section 1237.5's use of the term "plea of guilty or nolo contendere." (*People v. Fulton, supra*, 179 Cal.App.4th at p. 1236.) The court reasoned, "We can see no reason to draw such a fine distinction regarding the words used. Appellant's attack goes to [his] guilt or innocence, the truth of the alleged enhancement, and would require consideration of evidence. Such issues have been removed from consideration by the plea and admission." (*Ibid.*, citing *People v. Perry, supra,* 162 Cal.App.3d at p. 1151.)

The Court of Appeal in *Perry* correctly held that a certificate of probable cause would not be required to review a true finding of an enhancement where a defendant had a jury trial on the enhancement, but pled to the main charge. (*People v. Perry, supra*, 162 Cal.App.3d at p. 1152, fn. 3.) Under the same reasoning, a certificate of probable cause is required where a defendant, such as appellant, had a jury trial on the main charge, and was convicted of that charge, but chose to forego a jury trial on the enhancement and admitted its truth.

The legislative history of section 1237.5, as discussed *supra*, further proves that it was intended to apply to all admissions, not merely pleas of guilty or no contest, as originally enacted. The legislative purpose was to try and stop the "expensive abusive process" wherein defendants in criminal cases who have been represented by counsel and plead guilty to thereafter file Notices of Appeal." (Deukmejian, Letter to Governor Edmund. G. Brown, June 8, 1965.) Limiting the scope of section 1237.5 to exclude admissions to prior convictions and other enhancements would revive this "long,

wholly ineffectual expensive process at public expense without benefit to anyone," which the Legislature sought to eradicate in 1965. (*Ibid.*)

The primary purpose behind section 1237.5 was to promote judicial economy by screening out frivolous claims before resources are unnecessarily expended on the meritless appeal. Permitting defendants to enter negotiated bargains with the prosecution wherein they admit prior conviction allegations in exchange for a modification of the charges, and then allow them to file an appeal solely on grounds challenging those admissions, would be harmful to this goal. Requiring defendants to comply with section 1237.5 to challenge admissions to sentencing enchantments, such as prior conviction allegations, serves judicial economy and the legislative intent behind the statute by screening out wholly frivolous claims challenging admissions before time and money are spent on preparation of the record, appointment of appellate counsel, and consideration of the claim itself. (See *People v. Mendez, supra*, 19 Cal.4th at p. 1095.)

Section 1237.5's goal of reducing wholly frivolous claims and the costs of producing court transcripts and appointment of counsel in such cases, is served by applying the certificate requirement in all cases wherein a defendant makes an admission as part of a negotiated bargain and then seeks to challenge that admission on appeal. In contrast, appellant's theory that a defendant may challenge either the underlying offense or any prior convictions so long as he went to trial on the underlying offense, would greatly increase the burden on appellate courts by enlarging the number of frivolous appeals.

The fact that section 1237.5 was originally introduced with the general language "plea of guilty," and subsequently amended by the Legislature to add pleas of nolo contendere and admissions of probation violations, bolsters the conclusion that the Legislature intended the trial

court screening function to apply to a broader class of cases, i.e. all cases wherein a defendant makes an admission and then challenges that admission on appeal. The legislative committee notes demonstrate that applying the certificate of probable cause requirement to admissions of prior convictions is well within the intent of 1237.5.

The screening function of section 1237.5 would be greatly injured if defendants were permitted to challenge admissions to prior convictions on direct appeal without first obtaining a certificate of probable cause. Undoubtedly, the number of filed appeals would increase. The Judicial Council of California, 2010 Court Statistics Report, found that there were 15,635 notices of appeal filed in California Courts of Appeal in fiscal year 2008-2009, including 6,819 criminal filings, 5,958 civil filings, and 2,858 juvenile filings.[2] (2010 Court Statistics Report, Statewide Caseload Trends 1999–2000 Through 2008–2009, p. 24.) Of the 5,299 criminal appeals by defendants, 94% of decisions were affirmed. (*Id.* at p. 26.) Statewide in 2008-2009, 165,460 felony cases were dismissed before trial following pleas. (*Id.* at p. 115.) Although pleas involving prior convictions were not reported, clearly the potential increase in appellate case load would be appreciable.

Frequently, a defendant will admit a prior conviction allegation and also enter a plea of guilty or no contest to the underlying charges. In such a case, the defendant should be required to comply with section 1237.5 requirements regardless of whether he seeks to challenge the admission or

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[2] In fiscal year 1990-1991, during the period when the trial court did not exercise the screening function of section 1237.5, 13,024 appeals were filed in the California Courts of Appeal. Of those, 6,275 were criminal appeals. (George W. Nicholson, *Administrative and Judicial Duties in the Trial Court After a Guilty or No Contest Plea*, 45 Hastings L.J. 573, 575 (March 1994).)

the plea, or both. Permitting the defendant to challenge the prior conviction admission without obtaining a certificate of probable cause would frustrate the screening function of section 1237.5, and harm judicial economy, by permitting the expenditure of legal and judicial resources before the trial court determines whether the claim was wholly frivolous.

Pleas and admissions involve the same forfeiture of rights. In most cases, pleas and admissions both result from negotiated bargaining and involve tactical decisions. When either a plea or admission is entered, the prosecution stops investigating the charge, and does not present evidence on the allegation. Claims following pleas or admissions are just as likely to be frivolous as claims following a trial by jury. Thus, the screening function is promoted by applying the certificate requirement in both cases. Finally, in both pleas and admissions, the prosecution detrimentally relies on the defendant's admission, so he or she should not be permitted to try to unilaterally better that bargain on appeal.

As explained in *Perry*, a defendant is entitled to a jury trial on both an underlying charge and an enhancement. When a jury trial is had, on either a underlying charge or prior conviction allegation, review can be had challenging conviction following that trial without a certificate of probable cause because there would have been a contested hearing, and the appeal would not be attacking the validity of an admission. In contrast, if a defendant pleads to an underlying charge and thereafter challenges the validity of that plea, a certificate of probable cause is required. Similarly, if a defendant admits a prior conviction allegation, and thereafter challenges that admission, a certificate of probable cause should be found required under the statute in order to challenge the validity of that admission. This is so regardless of whether the defendant pled to the underlying charge and the prior conviction enhancement, or just to the enhancement.

C. Appellant Was Required to Obtain a Certificate of Probable Cause Because His Claim That His Admission Of A Prior Conviction Allegation Was Not Knowingly and Intelligently Made Challenged the Validity of His Plea

As discussed, section 1237.5 applies to a defendant who appeals the validity of his prior conviction admission following a jury trial on the underlying offense. "'Admissions of enhancements are subject to the same principles as guilty pleas. A guilty plea admits every element of the offense charged and is a conclusive admission of guilt.'" (*People v. Fulton, supra*, 179 Cal.App.4th at p. 1237, citations omitted.)

Here, appellant needed a certificate of probable cause to challenge his pretrial admission of a prior prison term allegation, which resulted from a negotiated bargain. Prior to trial, appellant agreed to admit the alleged prior convictions, so that the information could be modified to charge him with simple petty theft. In return, the prosecutor agreed to modify the information and reduce count I from petty theft with a prior conviction to petty theft. (CT 38, 58; RT 14-23.)

The only claim appellant raises on appeal is that his admission of the prior prison term allegation was not knowing and intelligent, because he was not advised of his right to remain silent or to confront witnesses. (Appeal AOB at 4-13.)[3] Appellant's claim attacks the validity of his plea. Appellant's claim is an attempt to "trifl[e] with the courts by attempting to better the bargain on appeal." (*People v. Hester* (2000) 22 Cal.4th 290, 295.) Appellant should not be permitted to try and alter the terms of the agreement without a certificate of probable cause. (See *People v. Cuevas, supra,* 44 Cal.4th at p. 383.)

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[3] "Appeal AOB" refers to appellant's opening brief on appeal, filed in the California Court of Appeal, Third Appellate District, case No. C060532.

Appellant was entitled to a trial regarding his prior convictions. He chose to forego a jury or court trial, and admitted the prior convictions as part of a negotiated bargain to modify the charges. (CT 38, 58; RT 21-22.) As a result, a contested hearing was not held and a record was not made. Because there was no contested hearing, appellant's appeal attacks "the validity of a plea of guilty regarding the enhancement." (*People v. Perry, supra*, 162 Cal.App.3d at p. 1152, fn. 3.) As such, appellant should be held to be required to obtain a certificate of probable cause.

In *People v. Shelton, supra,* 37 Cal.4th 759, this Court addressed the issue whether a defendant may challenge the trial court's authority to impose a sentence lid on the ground that the sentence violated the multiple punishment prohibition of section 654. In exchange for the dismissal of other charges and a sentence lid of three years eight months, Shelton pled no contest to one count of stalking in violation of a protective order and one count of making a criminal threat. The plea agreement included a sentencing provision. (*Id.* at p. 764.) The Court of Appeal held that by entering into a plea agreement with a sentence lid, Shelton did not waive the right to challenge the sentence based on section 654 because the agreement expressly permitted him to "argue for" a sentence less than the maximum term. (*Id.* at pp. 764-765.)

This Court reversed the Court of Appeal's judgment, holding that notwithstanding the provision recognizing Shelton's right to argue for a lesser term, the "inclusion of a sentence lid implies a mutual understanding and agreement that the trial court has authority to impose the specified maximum sentence and preserves only the defendant's right to urge that the trial court should or must exercise its discretion in favor of a shorter term." (*People v. Shelton, supra*, 37 Cal.4th at p. 763.) In Shelton's case,

> Because the plea agreement was based on a mutual understanding (as determined according to principles of contract

> interpretation) that the court had authority to impose the lid sentence, defendant's contention that the lid sentence violated the multiple punishment prohibition of Penal Code section 654 was in substance a challenge to the plea's validity and thus required a certificate of probable cause, which defendant failed to secure.

(*Id.* at p. 769.)

Imposing the certificate requirement to admissions of prior convictions does not infringe upon a defendant's constitutional rights to appeal because, "The impact of section 1237.5 relates to the procedure in perfecting an appeal from a judgment based on a plea of guilty, and not to the grounds upon which an appeal may be taken." (*People v. Ribero*, *supra*, 4 Cal.3d at p. 63.) Where a defendant files a clearly frivolous claim, section 1237.5 prevents these claims from reaching overburdened appellate courts with no harm to defendants. The defendant's remedy where the certificate is denied is to file a petition for writ of mandate in the appellate court, arguing that the issue is not frivolous and that the trial court should be ordered to issue the certificate so that the contention can be reviewed on appeal. (See *People v. Holland*, *supra*, 23 Cal.3d at 84 n.6; *In re Brown*, *supra*, 9 Cal.3d at 683.)

Here, appellant's plea agreement was based on a mutual understanding that the prosecution would lessen the charge in count I from petty theft with a prior conviction to petty theft, if appellant admitted the prior conviction. Accordingly, appellant's claim that he was not properly advised of his constitutional rights before entering the plea challenges the plea's validity, and thus required a certificate of probable cause. In the event the trial court denied the issuance of a certificate, appellant's remedy was to file a petition for writ of mandate in the Court of Appeal, which he failed to do.

Appellant's reliance on *In re Joseph B.* (1983) 34 Cal.3d 952, 955, is misplaced. *In re Joseph B.* dealt with the issue of whether a minor who admits a juvenile court petition must secure a certificate of probable cause to obtain appellate review of any errors committed before or in the process. (*Id.* at p. 954.) This Court held that section 1237.5 did not apply to minors. (*Id.* at p. 955.) Because adjudications of juvenile wrongdoing are not criminal convictions, and because juveniles admit the allegations of a petition rather than pleading guilty, the Court concluded section 1237.5 did not apply to juveniles. (*Ibid.*) This in opposite case does not involve a minor.

Similarly, appellant's reliance on the Court of Appeal's decision in *People v. Wagoner* (1979) 89 Cal.App.3d 605, is misplaced, as *Wagoner* involved a plea of not guilty by reason of insanity. (*Id.* at pp. 609-610.) *Wagoner* held only that, "the fact that courts have extended the protections afforded a defendant under Boykin and Tahl to a defendant who pleads not guilty by reason of insanity does not mean that the insanity plea is identical to a guilty plea for all purposes, " and accordingly concluded, "the Legislature could not have intended that section 1237.5 would apply to appeals from convictions following an insanity plea." (*Ibid.*) Unlike the defendant in *Wagoner*, appellant admitted the prior conviction allegations; because he challenges the validity of that admission, his appeal is directly within the scope of section 1237.5. As such, he was required to obtain a certificate of probable cause. (*In re Chavez, supra,* 30 Cal.4th at pp. 653-654 & fn. 5 [the courts must enforce "strict adherence" to the requirements of section 1237.5].)

Appellant also relies on this Court's decision in *People v. Hoffard, supra*, 10 Cal.4th 1170. (AOB 10-11.) In *Hoffard*, this Court held, "[S]ection 1237.5 does not expressly limit the issues that may be raised on appeal once a certificate of probable cause has been obtained. Nor is any

such limitation implied by the language of the statute. . . . [¶] . . . By its terms the statute thus determines only whether or not an appeal may be taken." (*Id.* at p. 1177.) The purpose and effect of section 1237.5 "are not to define the issues cognizable on appeal from a guilty plea, but to create a mechanism for trial court determination of whether an appeal raises any nonfrivolous cognizable issue, i.e., any nonfrivolous issue going to the legality of the proceedings." (*Id.* at p. 1179.) Thus, the Court of Appeal in *Hoffard* had properly considered the defendant's factual-basis argument even though it had not been identified in the statement of grounds for appeal in his request for a certificate of probable cause. (*Id.* at p. 1174.)

In contrast, here, appellant never obtained a certificate of probable cause. The principles justifying the certificate requirement, as discussed in *Hoffard*, support the conclusion that appellant was required to obtain a certificate where he sought to challenge his admission, which had resulted from a negotiated bargain.

"'When a defendant pleads guilty to a crime . . . no trial is held on the question of guilt and there are no controverted issues, since he admits every element of the crime, and the plea necessarily results in a judgment of conviction.'" (*People v. Johnson, supra*, 47 Cal.4th at p. 677, citing *People v. Ward* (1967) 66 Cal.2d 571, 575.) Such is the case where a defendant admits a prior conviction. The defendant's admission settles the issue and necessarily results in a conviction on the enhancement. (See *People v. Lobaugh, supra*, 188 Cal.App.3d at p. 785 ["Admissions of enhancements are subject to the same principles as guilty pleas"].)

Appellant entered a negotiated plea, admitting the prior conviction allegations in exchange for modification of the charged offense. (CT 38, 58; RT 21-22.) As in *Fulton*, his admission removed from consideration the evidence supporting the allegations. Appellant's claim challenges the validity of his negotiated plea to the prior conviction allegations.

Therefore, appellant was required to comply with section 1237.5 and obtain a certificate of probable cause. His failure to do so renders his claim noncognizable on appeal.

D. *People v. Fulton* Correctly Imposed Section 1237.5 Requirements in Cases Involving Negotiated Admissions to Sentencing Enhancements

As discussed, in *Fulton*, the Court of Appeal, Third District, held that a defendant could not attack the validity of his admission of a prior prison term allegation without a certificate of probable cause. (*People v. Fulton, supra*, 179 Cal.App.4th at p. 1237.) The Court concluded that section 1237.5 applies to an enhancement allegation to which a defendant has entered a plea. (*Ibid.*)

The defendant in *Fulton* was convicted by jury on the underlying charges. He then waived his right to a jury trial on the prior prison term allegations, and admitted those allegations in exchange for dismissal of other counts. (*People v. Fulton, supra*, 179 Cal.App.4th at p. 1232.) On appeal, the defendant raised claims relating to the jury trial, and also claimed he did not knowingly and intelligently waive his constitutional rights in admitting the prior prison term allegation. (*Id.* at p. 1233.) The Court of Appeal held that the defendant needed a certificate of probable cause to challenge his admission to the prior prison term allegation, and that he was "trifling with the courts by attempting to better the bargain on appeal." (*Id.* at p. 1238.)

For the reasons stated above, the Court of Appeal's decision was correct and should be upheld. Section 1237.5 applies to an enhancement allegation to which a defendant has entered a plea. A defendant must obtain a certificate of probable cause to raise a claim challenging the validity of his negotiated plea to a sentencing enhancement allegation. Failure to obtain a certificate of probable cause renders the claim

noncognizable on appeal.

CONCLUSION

For the foregoing reasons, this Court should uphold the Court of Appeal's decision denying relief.

Dated: January 24, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 7,610 words.

Dated: January 24, 2011

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DECLARATION OF SERVICE BY CERTIFIED MAIL

Case Name: **People v. Maultsby**

No.: **S182042**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On January 24, 2011, I served the attached **RESPONDENT'S BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the law of the State of California the foregoing is true and correct and that this declaration was executed on January 24, 2011, at Sacramento, California.

_____
Signature

SA2010303737
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