In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
LORENZO CHAVEZ,
Defendant and Appellant.

Case No. S238929

Third Appellate District, Case No. C074138
Yolo County Superior Court, Case No. CRF042140
The Honorable Stephen L. Mock, Judge

ANSWER BRIEF ON THE MERITS

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ISSUES PRESENTED

1. Does Penal Code section 1203.4 eliminate a trial court's discretion under Penal Code section 1385 to dismiss a matter in the interests of justice?

2. Do trial courts have authority to grant relief under Penal Code section 1385 after sentence has been imposed, judgment has been rendered, and any probation has been completed?

STATEMENT OF THE CASE

Appellant pled no contest to two felonies: offering to sell a controlled substance (Health and Saf. Code, § 11379, subd. (a)); and failure to appear (Pen. Code, § 1320, subd. (b)). (*People v. Chavez* (2016) 5 Cal.App.5th 110, 113 (*Chavez*); see Cal. Rules of Court, rule 8.500(c)(2) [absent rehearing petition, this Court "normally will accept the Court of Appeal opinion's statement of the issues and facts"].) He was granted probation for four years, and in 2009 he successfully completed probation. (*Chavez, supra*, 5 Cal.5th at p. 113.) In 2013, he sought dismissal of the convictions, inviting the Superior Court to rely on Penal Code section 1385.[1] (*Ibid.*) The Superior Court refused, finding a lack of authority to dismiss under section 1385 after probation was concluded. (*Ibid.*) The Court of Appeal agreed, holding section 1203.4 is the sole authority to dismiss a case after the end of probation. (*Ibid.*)

This Court granted appellant's petition to review the issue whether section 1203.4 "eliminate[s]" power to dismiss under section 1385, and directed the parties to brief whether by its own terms the dismissal power of section 1385 exists "after sentence has been imposed, judgment has been rendered, and any probation has been completed."

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

SUMMARY OF ARGUMENT

The terms of section 1385 provide the power to dismiss a criminal "action." The criminal "action" is the "proceeding" for accusation, trial, and punishment. (§ 683.) The Legislature deems the "proceeding" concluded, via a "final judgment," when further proceedings for accusation, trial, and punishment are not contemplated. (*People v. Flores* (1974) 12 Cal.3d 85, 95.) The conclusion of the criminal action may be due to an order imposing a "sentence" or "granting probation." (§ 1237, subd. (a).)

Here, after the Superior Court granted appellant probation, the Legislature contemplated there would be no future proceeding, such as the need to impose sentence (*People v. Flores*, *supra*, 12 Cal.3d at pp. 94-95); rather, appellant was obligated to comply with the terms of probation and thus avoid punishment. It follows that, in the Legislature's view, the "proceedings were to be deemed concluded" upon a grant of probation. (*Id.* at p. 95.) With the end of the "proceeding," so ended the "action" (§ 683), and so ended any power to dismiss under section 1385.

This conclusion is reinforced by the Legislature's enactment and later refinement of section 1203.4, which provides for the restoration of some of the privileges enjoyed prior to felony conviction. Section 1203.4 applies to those who successfully complete probation, those who are discharged from probation, and any others who the court determines, in its discretion and in the interests of justice, should be granted relief. It is the exclusive manner in which those ordered to probation can obtain relief from an otherwise valid prior conviction, with the exception of obtaining a pardon from the Governor.

ARGUMENT

I. BECAUSE A CRIMINAL "ACTION" ENDS UPON A GRANT OF PROBATION, A COURT'S POWER TO DISMISS UNDER SECTION 1385 ENDS AT THAT TIME

This Court asks whether section 1385 empowers a court to "grant relief" once "sentence has been imposed, judgment has been rendered, and any probation has been completed." The answer is no. Subdivision (a) of section 1385 empowers a trial court to act upon a criminal "action," and the act permitted is to "dismiss" that "action."[2] The Legislature deems a criminal "action" ended upon a grant of probation, and when there is no longer an "action," there is no longer a thing that section 1385 empowers a court to "dismiss."

As always, construction of a statute is an issue of legislative intent, and the "first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*People v. Valladoli* (1996) 13 Cal.4th 590, 597.) The actual words of section 1385, subdivision (a) in relevant part, are these:

> The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. . . .

A key term in section 1385 is the "action." The Legislature's actual words in that regard are found in section 683, which states:

> The proceeding by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

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[2] "[I]t is well established that a court may exercise its power to strike under section 1385 'before, during or after trial,' up to the time judgment is pronounced." (*People v. Romero* (1996) 13 Cal.4th 497, 524, fn 11, citing, *People v. Orin* (1975) 13 Cal.3d 937, 945; *People v. Superior Court (Howard)* (1968) 69 Cal.2d 491, 505.)

So, a necessary part of this Court's question is whether, under section 683, the Legislature intended a "proceeding" to be concluded with an order granting probation. In *People v. Flores*, *supra*, this Court held that proceedings did end with a probation grant, althought the Court did not then make specific reference to section 683.

Convicted of burglary and granted probation without imposition of sentence, Flores appealed and argued his burglary had to be deemed in the second degree because the trial court did not specify the degree. (*People v. Flores*, *supra*, 12 Cal.3d at pp. 88-89, 93.) But a statute conferred that benefit to him only if the court failed to specify the degree "before passing sentence," and a grant of probation is not a sentence. (*Id.* at p. 93.)

This Court reasoned that the grant of probation ended "proceedings" in the trial court, because a grant of probation implies that future "imposition of sentence is not contemplated" and the Legislature through section 1237 deems a grant of probation a "final judgment." (*People v. Flores*, *supra*, 12 Cal.3d at pp. 94-95.) And because such trial court level proceedings were at an end, the time for the trial court to specify the degree of offense had ended, no matter that a sentence had not been imposed. (*Ibid.*)

Just as with probationer Flores, the grant of probation to appellant implied that a future "imposition of sentence [wa]s not contemplated" and thus the Legislature deemed the proceedings at an end upon that grant. That is to say, the Legislature expected (and in accepting probation appellant promised and was obliged to ensure) there would be no future "proceeding by which" appellant would be punished for the public offense of which he had been accused and convicted. In sum, the intent of the Legislature was that the criminal "action" (§ 683) was at an end upon the grant of probation.

Again, when there is no longer an "action," there is no longer a thing for a court to "dismiss" under section 1385, and yet dismissing an action is the entire relief empowered by section 1385. Thus, to answer this Court's question, there is no relief authorized by section 1385 once an order is made granting probation. It matters not what occurs thereafter, because the Legislature has deemed the "action" to end upon the grant of probation.

Appellant's counters do not alter this conclusion. Appellant quotes the Legislature's words defining a criminal "action" (Appellant's Opening Brief on the Merits "OBM" at pp. 10-11), but he does not confront that language; rather, he seeks to define an action as something that exists when a court has "jurisdiction in a fundamental sense over the action and the defendant" (OBM at p. 11). The Legislature however has already defined an action (§ 683) and that definition does not include or rely on "jurisdiction in a fundamental sense."

Nor is it helpful to speak in terms of fundamental jurisdiction over "subject matter" or a "case." (OBM at p. 10.) Even after a court commits a defendant to prison, it still has fundamental jurisdiction over the parties and the case, for it is possible the court will recall the sentence and impose a new sentence. (§ 1170, subd. (d)(1).) Yet appellant concedes no action pends once there has been such a commitment. (OBM at pp. 13-14, fn. 5.)[3]

Appellant also cites *People v. Superior Court (Giron)* (1974) 11 Cal.3d 793, 796 (*Giron*):

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[3] That concession is correct. As Courts of Appeal have observed, the power to act under section 1385 exists when the court is deciding whether to impose sentence on a charge, and is exhausted once the decision is made to impose a sentence. Thus, recall does not awaken a power to avoid a sentence on the charge by eliminating the charge (or part of it) under section 1385. (*People v. Espinosa* (2014) 229 Cal.App.4th 1487, 1497-1498; *People v. Nelms* (2008) 165 Cal.App.4th 1465, 1472–1473.)

> Although such an order granting probation is 'deemed to be a final judgment' for the limited purpose of taking an appeal therefrom [], it does not have the effect of a judgment for other purposes.

(OBM at p. 14.) But this Court already has held that upon a probation grant, the Legislature necessarily intends "that trial proceedings [are] deemed concluded" just as if the "final judgment" had been the imposition of a sentence. (*People v. Flores*, *supra*, 12 Cal.3d at p. 95.)

In *Flores*, this Court noted that "superficially at least" agreeing with the defendant's position appeared to conflict with the Court's decision in *Giron*, which had been decided less than one month prior. But this Court noted the issue in *Giron* (11 Cal.3d at p. 796) was the authority of a trial court to consider a motion to withdraw a plea of guilty after conviction, suspension of the imposition of sentence and an order granting probation. (*People v. Flores*, *supra*, 12 Cal.3d at p. 94, fn. 7.) In *Flores*, however, this Court reasoned that the grant of probation ended "proceedings" in the trial court, because a grant of probation implies a future "imposition of sentence is not contemplated" and the Legislature through section 1237 deems a grant of probation a "final judgment." (*People v. Flores*, *supra*, 12 Cal.3d at pp. 94-95.) The criminal action is thus concluded.

Appellant asserts one should not lightly infer statutory removal of the "power under section 1385." (OBM at p. 14.) But power under section 1385 is to "dismiss" an "action." Finding that section 1385 has no application when an action has ended is simply a refusal to expand the statute beyond the limits the Legislature intended.

Appellant argues this Court should find persuasive authority, as support for a trial court's power to dismiss a case following a grant of probation, the holding in *People v. Orabuena* (2004) 116 Cal.App.4th 84 (*Orabuena*). (OBM at pp. 15-17.) But that holding did not consider this

Court's subsequent clarification in *People v. Flores, supra*, of the language from *Giron.*

In *Orabuena* the Court of Appeal considered whether the superior court had discretion pursuant to section 1385 to dismiss a misdemeanor count on which the defendant had entered a plea and been sentenced, prior to sentencing on the remaining two counts. Thus, the action in which all of the counts had been charged was still pending before the court.

In *Orabuena*, the defendant was charged with possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a) [a felony]), being under the influence of methamphetamine (Health & Saf. Code, § 11550. subd. (a) [a misdemeanor]), and driving on a suspended or revoked license (Veh. Code, § 14601, subd. (a) [a misdemeanor]). (*People v. Orabuena, supra*, 116 Cal.App.4th at p. 89.) The complaint also alleged that the defendant suffered four prior convictions for driving on a suspended license (Veh. Code, § 14601.2). (*Ibid.*)

In November 2002, the defendant pled no contest to driving on a suspended or revoked license and admitted the prior convictions. (*People v. Orabuena, supra*, 116 Cal.App.4th at p. 89.) The court placed the defendant on probation, including a condition that he serve 30 days in jail. (*Ibid.*) In February 2003, the defendant pled to the remaining drug counts. (*Ibid.*) The court placed the defendant on probation for those two counts and ordered him to serve 180 days in jail. (*Ibid.*)

The defendant's conviction on the suspended license count, to which he had pled first, made him ineligible for Proposition 36's alternative sentencing scheme. (*Orabuena, supra,* 116 Cal.App.4th at p. 91; § 1210.1, subd. (b).) The defendant argued on appeal that the trial court erred in failing to dismiss the suspended license count under section 1385. (*Orabuena*, at p. 92.) The Court of Appeal reversed, holding that the disqualifying misdemeanor conviction "meets the definition of an 'action'

under section 1385, in that it is part of the criminal action filed against defendant." (*Orabuena*, at p. 95.) The court noted:

> In our view, the fact that the court had suspended imposition of sentence and ordered defendant to probation on the misdemeanor Vehicle Code section 14601 conviction before it ordered defendant to probation on the nonviolent drug offenses does not preclude the court from exercising its authority under section 1385 to dismiss the disqualifying misdemeanor conviction in the furtherance of justice so that defendant may become eligible for sentencing under Proposition 36.

(*Orabuena*, at p. 98.)

In other words, the superior court in *Orabuena* had yet to sentence the defendant on two counts in his still pending criminal proceeding at the time it was called upon to consider section 1385. Unlike *Orabuena*, appellant, in 2013, sought to invoke section 1385 long after his proceeding had concluded.[4]

Appellant also claims that *People v. Hyung Joon Kim* (2012) 212 Cal.App.4th 117 (*Kim*) supports his position. (OBM at pp. 17-18.) Appellant's reliance is misplaced. *Kim* simply reaffirmed the principle that a court's authority to dismiss pursuant to section 1385 is extinguished upon imposition of sentence and rendition of judgment. (*Kim, supra*, 212 Cal.App.4th at p. 125.) In *Kim*, the defendant sought to dismiss his case 14 years after pleading guilty to petty theft with a prior and 12 years after serving a three-year prison sentence. (*Id.* at pp. 119.) The trial court, over the prosecution's objections, dismissed the case at the defendant's invitation. (*Ibid.*) The Court of Appeal reversed the trial court's dismissal

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[4] To the extent this Court determines that *Orabuena* generally does stand for the proposition that probation, as opposed to the imposition of judgment, does not bar "use of section 1385 to dismiss an action after sentencing in the interests of justice" as appellant contends (OBM at p. 15) then it should be disapproved.

order, stating that a trial court had "no authority to dismiss an action after judgment has been imposed and the defendant has served his or her sentence." (*Id.* at pp. 119, 125.) In reaching this holding, the Court of Appeal rejected the defendant's argument that no final judgment had occurred in his case. (Id. at pp. 123-125.)

Appellant's argues that *Kim* supports his position based not on what the Court of Appeal decided in that case, but rather, on what the court did not decide. (OBM 17.) According to appellant, the Court of Appeal in *Kim* did not disagree with or "dispute" the contention "that 1385 applies so long as no judgment has been rendered." (OBM 17.) Appellant's logic is flawed. The Court of Appeal did not agree or disagree with that contention. Rather, the court resolved the matter by concluding that defendant's case was a final judgment. As appellant himself recognizes (OBM 17), it is well established that decisions are not authority for matters not considered therein. (*People v. Jennings* (2010) 50 Cal.4th 616, 684.) Appellant's argument regarding what the court in *Kim* implicitly decided should therefore be rejected.

In sum, an appeal to rely on "fundamental jurisdiction" over a "case[]" (OBM at p. 18) is no substitute for respecting the Legislature's right to define an "action" (§ 1385) in terms of the "proceeding[s]" for a contemplated future "punishment" (§ 683). According to the Legislature, proceedings are "deemed concluded with the granting of [a] 'final judgment' order" of probation (see *People v. Flores*, *supra*, 12 Cal.3d at p. 95). Because the Legislature deems a criminal action ended with a grant of probation, the controlling intent of the Legislature is that there is no action to dismiss under section 1385 once probation is granted.

II. PENAL CODE SECTION 1203.4 IS THE EXCLUSIVE METHOD FOR A TRIAL COURT TO GRANT RELIEF IN A MATTER INVOLVING FELONY PROBATION

Once a trial court orders a defendant to probation the action is complete and any authority conferred on the court by section 1385 has concluded. Thus, there is no need to determine whether section 1203.4 eliminates a trial court's discretion under section 1385 after a grant of probation. Nevertheless, in order to address both issues presented by this Court, respondent will assume for sake of argument that an action does not end with the granting of probation. Even if that is assumed to be true, the Legislature intended section 1203.4 to be the exclusive method for a trial court to grant relief in a matter involving felony probation because in it the Legislature carefully determined who is entitled to relief, the specific manner in which the relief is obtained, including adequate notice requirements, and limitations on the scope of that relief.

A. Section 1203.4 Was Meant to Occupy the Field

As noted above, section 1385 permits a court to order an action dismissed "in furtherance of justice. . . ." (§ 1385, subd. (a).) As summarized by this Court in *People v. Lara* (2012) 54 Cal.4th 896, 900-901, "Although the statute literally authorizes a court to dismiss only an entire criminal action, we have held it also permits courts to dismiss, or 'strike,' factual allegations relevant to sentencing, such as those that expose the defendant to an increased sentence." Further, "the court's power under section 1385 is not unlimited; it reaches only the 'individual charges and allegations in a criminal action.'" (*Id.* at p. 901, citing *People v. Thomas* (2005) 35 Cal.4th 635, 644.)

The issue presented here is whether section 1203.4 eliminates a trial court's discretion under section 1385 to dismiss a matter in the furtherance of justice. The Legislature intended section 1203.4, which was enacted

after section 1385, to occupy the field for relief for felony probationers. In other words, interpreting section 1385 as appellant proposes, renders section 1203.4 and all of its subsequent amendments a nullity.

Two considerations are important to the determination of legislative intent in the instant case. First, statutes, are not construed in isolation, but in the context of the entire scheme of law of which they are part. (*People v. Thomas* (1992) 4 Cal.4th 206, 210 (*Thomas*).) Second, as this Court has stated, "it is not necessary that the Legislature expressly refer to section 1385 in order to preclude its operation." (*Id.* at p. 211.)

When the entire statutory scheme is considered, it is patent that the Legislature intended that section 1203.4 eliminate a trial court's discretion under section 1385 to dismiss a conviction in the furtherance of justice after an individual is granted probation. Subsequent to the enactment of section 1385, the Legislature enacted an entire statutory scheme governing relief from a felony conviction for a probationer once that individual is no longer on probation. The Legislature carefully limited the scope of section 1203.4 relief and the manner and circumstances in which it could be obtained. The Legislature subsequently amended section 1203.4 to broaden the category of probationers to whom it applies. Now all probationers, whether they successfully complete probation or not, may seek relief pursuant to that section. It is not logical that the Legislature also intended that trial courts, pursuant to section 1385, have the authority to dismiss prior convictions without the procedures and limitations of section 1203.4. If section 1385 can function as appellant contends, then enactment of section 1203.4 was simply pointless.

B. Section 1203.4 Provides a Pathway to Elimination of Penalties and Disabilities Resulting from Felony Convictions

The Legislature determined that individuals with felony convictions should, going forward, have particular, specific disabilities, absent appropriate relief. Some consequences of a felony conviction include its use to enhance a new sentence, to trigger a recidivist sentencing scheme, or to reduce eligibility for probation or diversion in a subsequent action. (See §§ 667, 1170.12, 1203, subd. (e), 1210.1.) Other consequences include disqualification from jury service, professional licensing restrictions, impeachment of a witness at trial, prohibition from certain positions of public employment, eligibility for in rem civil forfeiture proceedings, and restrictions on gun and ammunition possession. (*People v. Ansell* (2001) 25 Cal.4th 868, 872-873, 888-889 [recognizing that such disabilities experienced by convicted felons serve "vital public interests, avoid criminal punishment, and otherwise raise no ex post facto concerns"]; see also *United States v. Ursery* (1966) 518 U.S. 267, 270 [no double jeopardy violation in civil property forfeiture, a remedial civil sanction, after criminal conviction]; *United States v. Marks* (2004) 379 F.3d 1114, 1119-1120 [federal law precludes firearm and ammunition possession by felons]).

Importantly, convictions for certain gang-related crimes, narcotics offenses, or sex offenses may trigger a duty to register, which is a civil, regulatory consequence of the conviction. (*People v. Castellanos* (1999) 21 Cal.4th 785, 798-799; Health & Saf. Code, § 11590; §§ 290, 186.30.) And in the case of violent sex offenders, the conviction is one of several prerequisites for civil commitment as a sexually violent predator under the Sexually Violent Predators Act. (Welf. & Inst. Code, § 6600 et seq.;

People v. McKee (2010) 47 Cal.4th 1172, 1202-1203; *People v. Allen* (2008) 44 Cal.4th 843, 860 [SVP proceedings are civil in nature]).

In sum, the Legislature has determined that in a number of different areas the public interest is served by having particular disabilities attach to a felony conviction. The Legislature has also determined that those convicted of felonies, but placed on probation, should have an avenue to possibly obtain later relief from some, but not all of, those disabilities.

C. Section 1203.4 Permits the Partial Restoration of Rights for Those Convicted of a Felony and Placed on Probation

Not every individual convicted of a felony is sentenced to prison, and the Legislature has, by statute, established probation as a rehabilitative pathway that permits convicted felons who are granted the privilege of probation to subsequently have some of the disabilities resulting from their conviction restored.[5] Section 1203.4 is that pathway.

The primary purpose of granting probation instead of a prison sentence is to help the defendant's rehabilitation. (*People v. Matranga* (1969) 275 Cal.App.2d 328, 332.) Probation is both an act of clemency and grace, and an investment in the probationer's reform. Those who successfully complete probation, are discharged from probation, or any

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[5] Another pathway for the restoration of rights for those convicted of a felony is obtaining a pardon from the governor. The decision to grant a pardon is discretionary and ultimately rests with the governor. (*People v. People v. Ansell, supra*, 25 Cal.4th at p. 891.) Indeed, an expansive interpretation of a court's authority pursuant to section 1385 would likely violate the doctrine of separation of powers. (Cal. Const., art. V, § 8; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 662.) Additionally, effective January 1, 2017, individuals may also challenge a conviction on habeas on the grounds it is legally invalid due to a prejudicial error regarding the ability to meanifully understand, defend against, or accept the actual or potential immigration consequences or newly discovered evidence even if they are no longer imprisoned or restrained. (§ 1473.7.)

other case in which the court feels the interests of justice would be served, may seek removal of some disabilities under section 1203.4. (*In re Griffin* (1967) 67 Cal.2d 343, 347, fn. 3 ["On application of a defendant who meets the requirements of section 1203.4 the court not only can but must proceed in accord with that statute. [Citations.]"]).

Relief under section 1203.4 provides distinct benefits, but not an expungement of the criminal conviction. (*People v. Frawley* (2000) 82 Cal.App.4th 784, 791.) The benefits restored by grant of relief under section 1203.4 include the right to "truthfully represent to friends, acquaintances and private sector employers that he [or she] has no conviction" (*People v. Acuna* (2000) 77 Cal.App.4th 1056, 1060); the right not to volunteer information about the prior conviction unless directly asked when applying for certain public offices or licenses, or contracting with the state lottery (§ 1203.4, subd. (a)(1)); and the right to apply for a certificate of rehabilitation and release at the earliest possible time (*People v. Arata* (2007) 151 Cal.App.4th 778, 788; §§ 4852.01, subd. (b), 4852.03, subd. (a)(3)). Section 1203.4 also lists exceptions to the penalties and disabilities from which the defendant is released: he/she remains subject to impeachment as a felon, may not possess firearms or ammunition, and may not hold any license or public office that is specifically precluded by the conviction, such as becoming licensed as an attorney, physician, seller of alcoholic beverages, or becoming a peace officer. (§ 1203.4, subd. (a); *People v. Guillen* (2013) 218 Cal.App.4th 975, 996-997; *Doe v. California Dept. of Justice* (2009) 173 Cal.App.4th 1095; *Krain v. Medical Board* (1999) 71 Cal.App.4th 1416, 1419-1420.) Section 290.007 precludes release from sexual offender registration.

D. The Legislature Intended Section 1203.4 to Be the Exclusive Manner Through Which Individuals Granted the Privilege of Probation Obtain Relief from the Disabilities That Resulted from Felony Convictions

1. Section 1203.4 governs the availability of relief from conviction for all persons placed on felony probation

The issue here is whether section 1203.4 eliminates the discretion under section 1385 to dismiss in the furtherance of justice. When an individual has been convicted of a felony, and is then granted the privilege of probation, it does.

The Legislature crafted a statutory scheme that governs the availability of relief for individuals granted probation to restore some, but not all, of the privileges they enjoyed prior to felony conviction. In so doing, the Legislature created a process, including notice to the prosecuting attorney and, in some cases, the recovery of costs incurred by the courts and supervising entities. The Legislature also carefully delineated the extent of relief available, including, for example, the conviction's availability for use in subsequent criminal proceedings, continued registration for sex offenders registrants, and continued prohibition on the possession of guns and ammunition. While specified categories of probationers are entitled to relief, the Legislature also conferred on the courts the discretion to act in the "interests of justice" in "any other case." (§ 1203.4, subd. (a).)

When the provisions of section 1203.4 are considered, it is evident that the Legislature intended section 1203.4 to govern eligibility for relief for all possible categories of felony probationers. Section 1203.4 applies to every individual placed on felony probation. The first category of probationers to whom section 1203.4 applies are those, such as appellant who fulfill the conditions of probation for the entire period of probation.

(§ 1203.4, subd. (a)(1).) In other words, those who successfully complete probation.

The second category is felony probationers who are discharged from probation prior to the termination of their period of probation. (§ 1203.4, subd. (a)(1).) A trial court has the authority to terminate probation and discharge the probationer when "the ends of justice" will be served and when warranted by the probationer's good conduct and reform. (§ 1203.3, subd. (a).) To be discharged from probation refers to "the release of the defendant from the restraints and conditions of probation." (*People v. Johnson* (2012) 211 Cal.App.4th 252, 263.) But a probationer is not eligible for relief when probation was terminated early because the individual was sent to prison for violating probation. (*Id.* at 262.)

The third category vests courts with broad discretion to grant relief pursuant to section 1203.4. By its own terms 1203.4 applies to "any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section. . . ." (§ 1203.4, subd. (a)(1).) Thus, the Legislature saw fit to permit the court to exercise discretion "in the interests of justice" to grant relief in "any other case. . . ." (*Ibid.*) These three categories effectively cover every felony probationer, thereby demonstrating the legislative intent that section 1203.4 be the exclusive remedy for any felony probationer.

2. The procedural requirements and specific limitations on the type and availability of relief under section 1203.4 demonstrate the Legislature's intent that section 1203.4 occupy the field

Given that the Legislature created avenues for relief for every category of probationer, it is untenable to argue that it also intended section 1385 to grant the courts more authority.

Further, the various limitations and procedures incorporated in section 1203.4 demonstrate that, although the Legislature intended felony

probationers to have the opportunity for relief, there are limits. The Legislature intended to permit those convicted of felonies and placed on probation limited relief from those convictions, but not for all purposes in all contexts.

Individuals do not qualify for relief pursuant to section 1203.4 if they are serving a sentence, on probation, or charged with any offense. (§ 1203.4, subd. (a)(1).) Thus, unlike the sweeping impact of section 1385 proposed by appellant, the Legislature has determined that felony probationers who have another offense which is pending or for which he/she is serving a sentence or again been granted probation do not qualify for relief.

The Legislature also determined that if relief is granted and there is a subsequent offense, "the 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." (§ 1203.4, subd. (a)(1).) Further, the Legislature determined that even if section 1203.4 relief is granted, the conviction must be disclosed in response to a direct question on a questionnaire or application for public office, licensure by any state or local agency, or for contracting with the California State Lottery Commission. (§ 1203.4, subd. (a)(1).)

Section 1203.4 contains other limitations as well. The Legislature determined that relief pursuant to section 1203.4 does not permit a person to own, possess, or have in his/her custody or control a firearm, or prevent conviction for firearm offenses prohibiting access to firearms (§ 29800 et seq). (§ 1203.4, subd. (a)(1), (2).) In section 1203.4 the Legislature determined that firearms possession or ownership would not be permitted even for those who obtain relief pursuant to that section. Another limitation of section 1203.4 is that if a person is prohibited from holding

public office because of the conviction, relief pursuant to section 1203.4 does not permit him/her to do so. (§ 1203.4, subd. (a)(1).)

In subdivision (d) of section 1203.4, the Legislature also determined that recouping some costs related to the granting of relief pursuant to section 1203.4 would be appropriate. The recoverable costs are capped and only recoverable if it appears to the court that the petitioner has the ability to pay. Nevertheless, this demonstrates that the Legislature determined that as part of the process of restoring some of the probationer's rights and privileges that courts, counties and/or cities should recoup some of the costs associated with the services rendered to the probationer. (§ 1203.4, subd. (d).)

Finally, section 1203.4 requires notice to the interested parties. Subdivision (e)(1) prohibits relief unless the prosecuting attorney received 15 days' notice. This gives the prosecuting agency an opportunity to provide the court with a complete picture of the circumstances. None of these limitations or protections would exist if a probationer could simply bypass section 1203.4 and obtain relief pursuant to section 1385.

There is yet another important limitation on available relief pursuant to section 1203.4 that is indicative of the Legislature's intent that it occupy the field. The Legislature provided in section 1203.4 that some individuals simply do not qualify for relief from the disabilities attaching to their felony convictions because of the nature of the underlying conviction itself. In section 1203.4, subdivision (b), the Legislature specified that there is no relief available for individuals convicted of section 286, subdivision (c) (sodomy when the perpetrator is more than 10 older than a victim who is under 14 years old), section 288 (child molestation), section 288a, subdivision (c) (oral copulation when the perpetrator is more than 10 older than a victim who is under 14 years old), section 288.5 (continuous sexual abuse of a child), 289, subdivision (j) (forcible sexual penetration when the

perpetrator is more than 10 older than a victim who is under 14 years old), section 261.5, subdivision (d) (unlawful sexual intercourse when the perpetrator is 21 or older and the victim is under 16), sections 311.1, 311.2, 311.3, or 311.11 (pertaining to child pornography or sexual exploitation of children), or to specified misdemeanors in the Vehicle Code, or to an infraction. [6]

Thus, the Legislature has determined that section 1203.4 relief is simply unavailable for some felony convictions, primarily pertaining to child sexual abuse and exploitation, even in instances when the individual has been granted probation. It implausible to argue that the Legislature intended section 1385 to authorize erasing, without limitation, that same felony probationer's conviction from history.

3. Section 1203.4 is the exclusive statutory scheme governing the availability of relief from conviction for felony probationers

When considered in its entirety it is evident that, in enacting section 1203.4, the Legislature intended to create an avenue for those no longer on probation to restore some of the privileges enjoyed prior to their felony convictions, but in so doing created a process that included multiple requirements, safeguards, cost considerations, and limitations. Appellant's contention that the Legislature also intended section 1385 to be applied in a way that would render section 1203.4 a nullity is illogical.

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[6] Section 1203.4 also states that the governor still has the right to pardon a person convicted of violating sections 286, subdivision (c), 288, 288a, subdivision (c), 288.5, 289, subdivision (j), if there are "extraordinary circumstances."

a. Interpreting section 1385 in the manner proposed by appellant would nullify section 1203.4

The Legislature created a detailed and specific statutory scheme in section 1203.4 that governs felony probationers' potential eligibility for limited relief from the future effects of their felony convictions. Section 1203.4 also imposes important procedures, such as required notice to the prosecuting attorney. In contrast, a court's general dismissal authority under section 1385 has no substantive or procedural limitations. The substantive effects of a section 1385 dismissal are manifold. A section 1385 dismissal would eliminate the use of prior convictions for enhancement and impeachment purposes, permit gun ownership, permit employment in restricted jobs, and relieve sex offenders of registration requirements. A section 1385 dismissal would also permit dismissal of convictions for specific sex offenses that are not even eligible for the limited relief available under section 1203.4. A trial court's dismissal pursuant to section 1385 could occur without any notice to interested parties, including to the prosecuting agency.

Thus, permitting a post-probation dismissal of an action pursuant to section 1385 would render void and superfluous all of the specific limitations the Legislature has enacted for section 1203.4 relief. There is no basis for concluding that the general dismissal provisions of section 1385 apply in the probation context. To do so would render the more specific relief provisions of section 1203.4 meaningless.

As noted by the Court of Appeal (*Chavez, supra*, 5 Cal.App.5th at p. 119) originally section 1203.4 had the same effect as a dismissal pursuant to section 1385.

> 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. [123] at pp. 130–131, 208 P. 135; see *In re Disbarment of Herron* (1933) 217 Cal. 400, 19 P.2d 4 (*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, 109 P.2d 344.)

(*Chavez, supra*, 5 Cal.App.5th at p. 119.)

Amendments to section 1203.4 further support the argument that the Legislature intended that section to be the exclusive avenue through which individuals placed on felony probation can obtain relief from specified penalties and disabilities resulting from conviction. As noted by the Court of Appeal in this case:

> 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, 94 Cal.Rptr.3d 570; see *Mgebrov, supra*, 166 Cal.App.4th at p. 587, 82 Cal.Rptr.3d 778 [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.

(*Chavez, supra*, 5 Cal.App.5th at pp. 119-120.)

Appellant argues that amendments to section 1203.4 demonstrate only an intent to create a rehabilitative scheme that "would offer specific, but limited, relief to a certain class of probationers," and that 1203.4 by its terms is not evidence that the Legislature sought to eliminate the court's discretion under section 1385. (OBM at p. 24.) But by its own terms section 1203.4 does not apply to a sub-group of probationers. With the addition of the language in 1971 creating an additional category of probationers (those who should be granted relief in the court's discretion and in the interests of justice), the Legislature created a scheme that applies to all individuals granted probation. The Legislature could not at the same time have intended that a court could ignore the comprehensive scheme created by section 1203.4, and erase a conviction from history using section 1385. The "action" contemplated by section 1385 is the specific action before the court. Section 1203.4 makes it patent that section 1385 is not authority for a court to reach back in time to eliminate a conviction after the action is over. Section 1203.4 precludes such a process from occurring without notice or advisement to the prosecuting agency.

Appellant also argues that none of the amendments to section 1203.4 show a clear intent to eliminate the court's discretion, "nor do any of the cited amendments even mention section 1385." (OBM at p. 24.) It was not necessary for the Legislature to specifically cite section 1385 in order to demonstrate its intent that specified individuals must obtain relief through section 1203.4 exclusively.

This Court's decision in *People v. Thomas, supra,* 4 Cal.4th 206, is instructive. In *Thomas* the defendant was charged with robbery (§ 211) and a firearm enhancement (§ 12022.5, subd. (a)). (*Id.* at p. 208.) The defendant negotiated a plea with the precise term of imprisonment conditioned on the result of his motion to strike the firearm enhancement. (*Ibid.*) The People opposed the motion to strike, arguing the court lacked

the authority to do so. The court denied the motion without indicating whether or not it was exercising its discretion pursuant to section 1385. (*Ibid.*) The Court of Appeal affirmed, concluding that the trial court lacked the authority pursuant to section 1385 to strike a firearm enhancement. (*Ibid.*)

This Court noted that section 1170.1, subdivision (d) provides that, when the court imposes a prison sentence for a felony, "the court shall also impose the additional terms provided" in 16 specified code sections including section 12022.5, "unless the additional punishment therefor is stricken pursuant to subdivision (h)." (*Id.* at p. 209.) In turn, subdivision (h) provided that "'Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided' in 13 of the 16 enhancement sections set forth in section 1170.1 subdivision (d),' 'if it determines that there are circumstances in mitigation of the additional punishment. . . .'" (*Ibid.*) The Legislature had previously amended section 1170.1, subdivision (h) to delete section 12022.5 as one of the code sections that could be stricken. (*Ibid.*) Relevant to the analysis here this Court also noted that section 1385 permitted the "sentencing authority" to dismiss an action in the furtherance of justice, and that in repealing the section 1170.1, subdivision (h), the Legislature made no reference to section 1385. (*Ibid.*)

The question before this Court was one of legislative intent. This Court recognized that absent clear legislative direction to the contrary a trial court retains authority under section 1385 to strike an enhancement. (*Thomas, supra*, 4 Cal.4th at p. 210.) Importantly, this Court also recognized:

> But it is not necessary that the Legislature expressly refer to section 1385 in order to preclude its operation. (See *People v. Rodriguez* (1986) 42 Cal.3d 1005, 1019, 232 Cal.Rptr. 132, 728 P.2d 202 [§ 1385 may be held inapplicable "in the face of [a]

> more specific proscription on the court's power"]; *People v. Tanner, supra*, 24 Cal.3d at pp. 519–521, 156 Cal.Rptr. 450, 596 P.2d 328 [specific language of § 1203.06 barring probation contained sufficient indicia of legislative intent to preclude judicial exercise of discretion under § 1385]; see also *People v. Dillon* (1983) 34 Cal.3d 441, 467, 194 Cal.Rptr. 390, 668 P.2d 697 [deletion of provision indicates legislative intent to change law].) As we stated in *People v. Williams, supra*, 30 Cal.3d at page 482, 179 Cal.Rptr. 443, 637 P.2d 1029, "Section 1385 permits dismissals in the interest of justice in any situation where the Legislature has not clearly evidenced a contrary intent."

(*Thomas, supra*, 4 Cal.4th at p. 211.)

Section 1203.4 by its own terms applies to every category of probationer. It is more narrowly focused than section 1385 and excludes some offenders entirely, who must seek relief in the form of a pardon from the governor. Additionally, section 1203.4, created a process for relief, exceptions to the available relief, and notice requirements. By encompassing every possible category of probationer, successful and unsuccessful, limiting the scope of available relief, and providing for notice and recovery of costs, clearly the Legislature did not intend 1385 to create an avenue for evasion of the requirements of section 1203.4.

Appellant argues that sections 1203.4 and 1385 present "alternative" but not "conflicting" forms of relief. (OBM at p. 26.) To the contrary, what the enactment of section 1203.4 and its subsequent amendments demonstrate is that the Legislature intended to create a comprehensive statutory scheme for individuals placed on probation to obtain limited relief from those convictions. In so doing the Legislature determined the circumstances in which that relief was available, exceptions to the release from certain disabilities, and provided necessary notice requirements and a process for recovery of costs. Section 1203.4 is a specific statute narrowly focused on a single aspect of the state's rehabilitative scheme. Enactment

of section 1203.4 would be at odds with an interpretation of section 1385 that simply reaches back in time to erase long since final felony convictions from existence. Under appellant's interpretation there are no limits on section 1385 relief.

It is well-established that inconsistencies between two legislative provisions are resolved by applying the more specific. (*Thomas, supra*, 4 Cal.4th at p. 213, citing *People v. Tanner* (1979) 24 Cal.3d 514, 521.) Appellant's expansive interpretation of section 1385 would put it at odds with section 1203.4. The narrower section 1203.4 was intended to be the exclusive remedy for relief after a grant of probation.

Appellant contends the Court of Appeal "considered the fact that section 1203.4 is an explicit articulation of the conditions under which a court must and may grant dismissal after a grant of probation, and that such an explicit set of conditions reflects legislative intent to override section 1385." (OBM at p. 28.) It is appellant's position that this Court "recently rejected just such an argument in *People v. Fuentes* [(2016) 1 Cal.5th 218, 229 (*Fuentes*)]". (OBM at pp. 28-29.)

The Court of Appeal considered this Court's decision in *Fuentes*, however, and noted that "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." (*Chavez, supra*, 5 Cal.App.5th at p. 116, fn. 2.) Consideration of *Fuentes* demonstrates that the Court of Appeal correctly determined it presented a different circumstance than the instant case.

Fuentes considered whether by enacting section 186.22, subdivision (g), the Legislature eliminated a trial court's section 1385, subdivision (a) discretion to dismiss or strike a section 186.22, subdivision (b)(1) gang enhancement. (*Fuentes, supra*, 1 Cal.5th at pp. 221-222.) This Court held

that the trial court had the discretion to strike the gang enhancement under section 1385. (*Id.* at p. 222.)

In *Fuentes* this Court noted the long history of dispute among the branches of government regarding the application of section 1385 to "sentencing provisions" and concluded that therefore the legislative intent to "divest a court of its section 1385 discretion must be abundantly clear." (*Fuentes, supra*, 1 Cal.5th at pp. 229-230.) The instant circumstance, of course, is not in the context of sentencing. Rather the issue is whether section 1385 can be interpreted in such a way as to permit the dismissal of long final felony convictions, outside the context of sentencing and without limitation.

Appellant contends that *Fuentes* is instructive because this Court rejected an argument that an express articulation of powers to a court signaled the Legislature's intent to limit a court's authority under section 1385. (OBM at p. 28.) The circumstance here is different. Appellant is not proposing application of section 1385 to strike a sentencing enhancement, which necessarily includes a "long history of dispute among the various branches of state government over the application of section 1385 to sentencing allegations." (*Fuentes, supra*, 1 Cal.5th at p. 230, quoting *People v. Romero, supra,* 13 Cal.4th at pp. 521-522.) Indeed, in considering some of that history this Court noted its decision in *People v. Fritz* (1985) 40 Cal.3d 227, 229, in which it held that trial courts had authority under section 1385 to strike prior serious felony convictions, which mandated a five-year enhancement for each conviction (§ 667, subd. (a)). This Court in *Fuentes* noted:

> In so holding, we explained that our then-recent opinions "sent an unmistakable signal to drafters of sentencing provisions of

the need to include clear language eliminating a section 1385 authority whenever such elimination is intended.

(*Fuentes, supra*, 1 Cal.5th at p. 230.[7])

There is no corresponding history among the branches of government regarding the application of section 1385 to eliminate a final conviction. No series of opinions sent the "unmistakable signal" to the drafters of section 1203.4 regarding the need to include clear language eliminating section 1385 authority in the context of probation.

This Court's discussion of *People v. Thomas, supra*, 4 Cal.4th at p. 208, in which this Court noted that a clear reference to section 1385 is not required, is more pertinent here. (*Fuentes, supra*, 1 Cal.5th at pp. 226-227.) Appellant proposes interpreting section 1385 to permit courts to eliminate a prior conviction for an individual convicted of a felony and granted probation. There is certainly no history of the courts having the authority to dismiss a conviction in this situation. Nor is there reason to think it would have occurred to the Legislature enacting a comprehensive statutory scheme pertaining to relief from convictions for those granted probation that it would be necessary to expressly state that the statute was intended to eliminate the court's power pursuant to section 1385 in that context.

Appellant also argues that sections 1203.4 and 1385 have different purposes and courts can therefore retain their authority under section 1385 without undermining section 1203.4. (OBM at p. 30.) Appellant appears to base this argument on grounds that section 1203.4 is purportedly part of a rehabilitative inducement to successfully complete probation and section

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[7] The year after this Court held in *People v. Fritz, supra,* 40 Cal.3d at page 229, that trial courts had the authority pursuant to section 1385 to strike prior serious felony convictions (§ 667, subd. (a)), the Legislature added subdivision (b) to section 1385, clarifying that trial court in fact had no such authority. (*People v. Fuentes, supra*, 1 Cal.5th at pp. 230-231.)

1385 "is an equitable power to serve the interests of justice. . . ." (OBM at p. 30.) But as noted above, 1203.4 incorporates the "interests of justice" language into that statutory scheme. Section 1203.4, not section 1385, applies specifically to those who were convicted of felonies and granted the opportunity of probation.

Appellant acknowledges that section 1385 is not a rehabilitative instrument, but then immediately describes it as an "equitable power to serve the interests of justice, of which one consideration may be the extent of a defendant's rehabilitation, or to remedy a constitutional violation." (OBM at p. 31.) Appellant's argument is inconsistent. The Legislature determined that individuals who demonstrate rehabilitative progress are entitled to relief pursuant to section 1203.4. But the 1971 amendment created an additional category of probationers 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. (*Chavez, supra*, 5 Cal.App.5th at pp. 119-120.) Appellant's argument that 1385 is discretionary and 1203.4 is mandatory is inconsistent with the wording of the statute.

Under appellant's interpretation of section 1385, a court can simply dismiss a conviction on its own motion. Because there are no notice provisions (as opposed to section 1203.4) there is no reason to think the prosecuting agency would even be aware that a court had taken such an action in any particular case. The prosecuting agency would not be able to oppose the court's action, and perhaps even more importantly would have no ability to challenge the dismissal on appeal. Thus, appellant's proposed application of section 1385 would be unprecedented and directly contrary to the Legislature's intent in section 1203.4

Appellant contends that *People v. Tanner*, *supra*, 24 Cal.3d 514 (*Tanner*), is inapposite because in that case, there was "clear evidence" that

dismissal pursuant to section 1385 to dismiss an allegation would contravene legislative intent. (OBM at pp. 33-34.) The Court of Appeal below considered *Tanner* as an instance in which this Court determined that the Legislature provided clear direction limiting the authority of section 1385 without mentioning section 1385 directly. (*Tanner, supra*, 24 Cal.3d at p. 518.)

In *Tanner*, this Court considered whether section 1385 nullified the more specific provisions of section 1203.06. Section 1203.06 specified 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).) As summarized by the Court of Appeal below:

> 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, 156 Cal.Rptr. 450, 596 P.2d 328.) The Court said no, the mandatory provisions of section 1203.06 could not be avoided by employing section 1385. (*Tanner*, at p. 519, 156 Cal.Rptr. 450, 596 P.2d 328.) 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, 156 Cal.Rptr. 450, 596 P.2d 328.) 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, 156 Cal.Rptr. 450, 596 P.2d 328.) In addition, section 1203.06 is "the later enactment, adopted by the Legislature in response to the particular problem at 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, 156 Cal.Rptr. 450, 596 P.2d 328; See *People v. Rodriguez* (1986) 42 Cal.3d 1005, 1019, 232 Cal.Rptr. 132, 728 P.2d 202 [confirming continuing validity of *Tanner*].)

(*Chavez, supra*, 5 Cal.App.5th at pp. 117-118.)

The Court of Appeal considered the multiple consistencies between sections 1203.06 and 1203.4, and noted that like section 1203.06, section 1203.4 was enacted after section 1385 and is more specific. (*Id.* at p. 118.) It further noted that "[s]ection 1203.06 involves a particular prohibition not present in section 1203.4. But like the probation statute in *Tanner, supra*, 24 Cal.3d 514, 156 Cal.Rptr. 450, 596 P.2d 328, the original section 1203.4 contained mandatory terms." (*Id.* at p. 118.)

The Court of Appeal's ultimate conclusion was:

> 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, 14 Cal.Rptr.2d 174, 841 P.2d 159 [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, 156 Cal.Rptr. 450, 596 P.2d 328.) A contrary interpretation would nullify the original section 1203.4. "Under well-established rules of construction, any inconsistency between the two provisions would be resolved by applying the more specific provision." (*Thomas, supra*, 4 Cal.4th at p. 213, 14 Cal.Rptr.2d 174, 841 P.2d 159.)

(*Chavez, supra*, 5 Cal.App.5th at p. 119.)

Appellant is critical of the Court of Appeal's treatment of *In re Disbarment of Herron* (1933) 217 Cal. 400, disapproved in *In re Phillips* (1941) 17 Cal.2d 55, *People v. Banks* (1959) 53 Cal.2d 370, [superseded by statute as stated in *People v. Park* (2013) 56 Cal.4th 782], and *Stephens v. Toomey* (1959) 51 Cal.2d 864. (OBM at pp. 36-38.) Appellant contends that those cases did not consider section 1385. (OBM at pp. 36-38.) But the Court of Appeal considered those cases because they recognized section 1203.4 established the authority to dismiss a case following probation. (*Chavez, supra*, 5 Cal.App.5th at p. 120.) Appellant's position appears to

be that no case has granted a court the authority he proposes pursuant to section 1385, but any case that has noted the court's authority pursuant to section 1203.4 has no relevance to his position. In respondent's view, no case has recognized a court's authority to eliminate a prior felony conviction after a grant of probation pursuant to section 1385 because such authority does not exist. That authority is derived exclusively from section 1203.4.

Appellant also claims that *People v. Barraza* (1994) 30 Cal.App.4th 114, is inapposite. (OBM at pp. 38-39.) In *People v. Barraza, supra,* 30 Cal.App.4th at p. 121, the court explained that section 1203.4 was "the only postconviction relief from the consequences of a valid criminal conviction available to a defendant under our law." In a footnote at the end of that sentence the court observed:

> 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" (*People v. Superior Court* (*Flores*) (1989) 214 Cal.App.3d 127, 136, 262 Cal.Rptr. 576), this statute has never been held to authorize dismissal of an action after the imposition of sentence and rendition of judgment. (See *People v. Benjamin* (1957) 154 Cal.App.2d 164, 173, 315 P.2d 896.) 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. (*People v. Ritchie* (1971) 17 Cal.App.3d 1098, 1104, 95 Cal.Rptr. 462.)

(*People v. Barraza, supra,* 30 Cal.App.4th at p. 121, fn. 8.)

Contrary to appellant's assertion, *Barazza* recognized section 1203.4 as the exclusive authority in this area, stating "the Legislature has established only one such avenue for an adult, like appellant, convicted of a felony or misdemeanor who has been admitted to probation and not committed to prison, California Youth Authority or other state institutions."

(*People v. Barraza, supra,* 30 Cal.App.4th at p. 120.) Thus, *Barazza* directly supports respondent's argument.

Finally, *People v. Espinoza* (2014) 232 Cal.App.4th Supp. 1 concluded a grant of probation was a "final judgment." As *Espinoza* held, a trial court does not retain "the ability to dismiss a conviction under section 1385 after it has become final." (*Id.* at p. 4.) When the conviction was long final, *Espinoza* concluded section 1385 did not grant it the authority to dismiss that conviction:

> Appellant's argument would seemingly render nugatory sections 1203.4, 1203.4a, 4852.01 (certificate of rehabilitation and pardon in felony matters), and California Constitution, article V, section 8 (Governor's pardon authority). None of these statutes or powers would be needed if a trial court perpetually maintained the ability to make a conviction simply disappear under section 1385.

(*People v. Espinoza, supra,* 232 Cal.App.4th Supp. at p. 5.)

The Legislature expressly authorized the use of postjudgment motions in limited circumstances, but section 1385 is not among the authorized statutes. This court listed, section 17, subdivision (b)(3) (motion to reduce a "wobbler" to a misdemeanor), section 1016.5, subdivision (b) (motion to vacate judgment and withdraw a plea based on failure to advise of immigration consequences of the plea), section 1203.4 (motion by probationer to vacate plea and dismiss charges), and section 1473.6 (motion to vacate judgment based on newly discovered evidence of fraud) as examples of authorized postjudgment motions. (*People v. Picklesimer* (2010) 48 Cal.4th 330, 337, fn. 2 .) Section 1385 is not among them.

The Legislature never authorized motions to dismiss pursuant to section 1385 in the absence of a pending action. "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' (*People v. Superior Court* (*Flores*)

(1989) 214 Cal.App.3d 127, 136), this statute has never been held to authorize dismissal of an action after the imposition of sentence and rendition of judgment. (See *People v. Benjamin* (1957) 154 Cal.App.2d 164, 173.)" (*People v. Barraza, supra,* 30 Cal.App.4th at p. 121, fn. 8, parallel citations omitted.) Appellant's argument would be a judicially created expansion of a court's authority pursuant to section 1385. Such a construction would confer nearly unlimited appellate challenges because a defendant could "invite" a court to act "in furtherance of justice" and then appeal when the court declined to act or determined that it lacked authority to act with no limitation on the number of such postjudgment motions.

In sum, if the Legislature had intended section 1385 relief to be available to individuals in appellant's position, it would have structured 1203.4 differently. Patently, the legislature did not intend to do so. In section 1203.4 the Legislature carefully determined who is entitled to relief, the specific manner in which the relief is obtained, including adequate notice requirements, and limitations on the scope of that relief. Appellant's argument that this Court should expand the application of section 1385 should be rejected.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that this Court affirm the decision of Court of Appeal.

Dated: August 3, 2017

Respectfully submitted,

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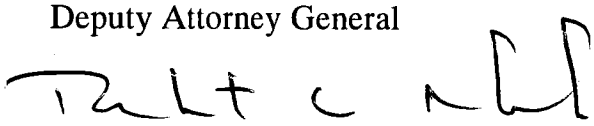

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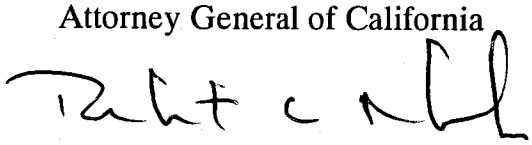
CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 9,616 words.

Dated: August 3, 2017

XAVIER BECERRA
Attorney General of California



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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Chavez** No.: **S238929**

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 with postage thereon fully prepaid that same day in the ordinary course of business.

On August 3, 2017, I served the attached **ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope 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 laws of the State of California the foregoing is true and correct and that this declaration was executed on August 3, 2017, at Sacramento, California.

_____
Declarant

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