In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

WILLIAM STAMPS,

Defendant and Appellant.

Case No. S255843

First Appellate District, Division Four, Case No. A154091
Alameda County Superior Court, Case No. 17CR010629
The Honorable James P. Cramer, Judge

RESPONDENT'S OPENING BRIEF ON THE MERITS

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ISSUE FOR REVIEW

Is a certificate of probable cause required to appeal on the ground that intervening legislation retroactively revives individualized judicial sentencing discretion foreclosed by a plea agreement? (See Pen. Code, § 1237.5.)[1]

INTRODUCTION

Section 1237.5 provides in relevant part that "[n]o appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere . . . 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." "The purpose for requiring a certificate of probable cause is to discourage and weed out frivolous or vexatious appeals" in order "to promote judicial economy." (*People v. Panizzon* (1996) 13 Cal.4th 68, 75.) Though there are exceptions to the certificate requirement (see, e.g., Cal. Rules of Court, rule 8.304(b)(4)),[2] "[i]t has long been established that issues going to the validity of a plea require compliance with section 1237.5" (*Panizzon*, at p. 76). Failure to obtain a certificate for such issues mandates dismissal of the appeal. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1096, 1099.)

Appellant agreed to a nine-year prison term as part of a negotiated disposition that included his no-contest plea to a residential burglary and admission to a prior serious felony conviction. Following imposition of the

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[1] Further undesignated statutory references are to the Penal Code.

[2] Further undesignated rule references are to the California Rules of Court.

agreed sentence, the trial court denied appellant's request for a certificate of probable cause. Appellant did not seek writ review of that ruling. Nevertheless, on appeal, he sought resentencing in the hope that the trial court would reduce his stipulated sentence by five years pursuant to Senate Bill No. 1393 (SB 1393). That bill took effect after appellant's sentencing and amended section 1385 to delete former subdivision (b), giving trial courts discretion they previously lacked to dismiss prior serious felony enhancements. (Stats. 2018, ch. 1013, §§ 1, 2.)

In seeking to reduce "the very sentence he negotiated as part of the plea bargain, [appellant] is, in substance, attacking the validity of the plea." (*Panizzon*, *supra*, 13 Cal.4th at p. 78.) Because he failed to secure a certificate of probable cause for his claim, his appeal is inoperative and must be dismissed pursuant to section 1237.5. (*Mendez*, *supra*, 19 Cal.4th at pp. 1096, 1099.) The Court of Appeal, however, found no certificate was required for appellant's claim, reasoning that a challenge to an agreed sentence based on a retroactive change in law does not constitute an attack on the plea's validity. Although it acknowledged that the terms of the plea agreement might prohibit striking the prior serious felony enhancement, it nevertheless remanded for reconsideration of appellant's sentence in light of SB 1393. (*People v. Stamps* (2019) 34 Cal.App.5th 117, 121, 124-125, review granted June 12, 2019, S255843.)

Failure to dismiss the appeal for lack of a certificate was error. This Court has made clear that the certificate requirement "should be applied in a strict manner." (*Mendez*, *supra*, 19 Cal.4th at p. 1098.) In dispensing with the requirement based on its determination that SB 1393 applies retroactively to stipulated sentences, the Court of Appeal carved a new exception into section 1237.5 based on the merits of appellant's claim. But section 1237.5 "is procedural in nature" (*Mendez*, at p. 1095), governing the timely investing of appellate jurisdiction over certificate issues. Its

applicability does not turn on whether a claim is meritorious. The certificate requirement, therefore, applies whether or not SB 1393 reaches defendants, like appellant, who agreed to specific sentences.

Moreover, *In re Estrada* (1965) 63 Cal.2d 740 does not compel the conclusion that SB 1393 permits defendants who agreed to specific sentences to request a remand for the trial court to exercise a sentencing discretion that the parties not only never contemplated, but undertook to eliminate. Given that the vast majority of felony cases are settled by plea, allowing noncertificate appeals in such circumstances would impose significant and unjustified costs on the criminal justice system. Indeed, "defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process." (*People v. Hester* (2000) 22 Cal.4th 290, 295; see also *People v. Kelly* (2019) 32 Cal.App.5th 1013, 1018, review granted June 12, 2019, S255145.) Thus, where, as here, the parties have agreed to a specific sentence as part of a negotiated plea, the defendant must obtain a certificate of probable cause to pursue an appeal challenging that sentence. Failure to do so requires dismissal of the appeal.

STATEMENT OF THE CASE

A complaint charged appellant with three counts of first degree residential burglary (§ 459) and alleged two prior strikes (§§ 667, subd. (e)(2), 1170.12, subd. (a)), two prior serious felony convictions (§§ 667, subd. (a)(1), 1170.12, subd. (c)(2)), and three prior prison-term commitments (§ 667.5, subd. (b)). (CT 1-5.)

Appellant pleaded no contest to one count of first degree burglary and admitted one prior strike and one prior serious felony conviction. In exchange, the prosecutor moved to dismiss the remaining burglary charges and other allegations. (CT 24-28, 30-36.) The parties agreed to a nine-year prison term, composed of the low term of two years for the burglary,

doubled pursuant to the Three Strikes law, and a five-year enhancement pursuant to section 667, subdivision (a)(1). (CT 26, 30-32, 35-36.)

The court imposed the agreed sentence on January 10, 2018. (CT 53-54.) Appellant noticed appeal "based on the sentence or other matters occurring after the plea that do not affect the validity of the plea." (CT 55.) However, he also sought a certificate of probable cause on the following grounds: "My base term was 2 years for a 1st degree burglary residential, which was a serious non-violent crime, where no forced entry was made. I only went into a carport garage (walk through) that was attached to an apartment complex. Besides the 2-year base term, I was also given 7 years of enhancements which made it 9 years 80%. . . . I truly believed I was unfairly sentenced." (CT 55-56.) The trial court denied a certificate.[3] (CT 56.)

On September 30, 2018, about six months after the notice of appeal, the Governor signed SB 1393 into law. The bill took effect January 1, 2019, giving trial courts discretion to strike or dismiss prior serious felony convictions. (§§ 667, subd. (a), 1385, subd. (b), as amended by Stats. 2018, ch. 1013, §§ 1, 2.) The new law applies retroactively to nonfinal judgments. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973.)

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[3] Appellant entered an appellate waiver, which read: "I hereby give up my right to appeal from this conviction, including an appeal from the denial of any pretrial motions." (CT 28.) The Court of Appeal concluded that appellant's waiver constituted a "general waiver of his appellate rights that did not preclude review of his sentence." (*Stamps*, *supra*, 34 Cal.App.5th at p. 120, fn. 3.) Respondent did not argue below that appellant waived his right to appeal. However, in light of recent case authority, respondent disagrees with the Court of Appeal's conclusion on this point. If a "'defendant agrees to a bargain which includes a specific or indicated sentence, and if that is the sentence actually imposed, the defendant's waiver will foreclose appellate review of the sentence.'" (*People v. Barton* (2019) 32 Cal.App.5th 1088, 1095, review granted June 19, 2019, S255214.)

The Court of Appeal agreed with appellant that because SB 1393 went into effect before his judgment was final, he was entitled to a new sentencing hearing so the trial court could decide whether to strike or dismiss his prior serious felony enhancement. (*Stamps*, *supra*, 34 Cal.App.5th at pp. 119-120.) The Court of Appeal concluded that section 1237.5 "does not apply when the challenge is based on a retroactive change in the law." (*Id.* at p. 121.)

ARGUMENT

I. FAILURE TO SECURE A CERTIFICATE OF PROBABLE CAUSE FOR A CLAIM SEEKING TO REDUCE A STIPULATED SENTENCE, WHICH CONSTITUTES AN ATTACK ON THE VALIDITY OF THE PLEA, COMPELLS DISMISSAL OF THE APPEAL

Section 1237.5 requires "the defendant to set forth grounds for appeal" and the trial court "to rule on the issue of probable cause." (*People v. Ribero* (1971) 4 Cal.3d 55, 62.) Its objective "is to promote judicial economy 'by screening out wholly frivolous guilty [and no contest] plea appeals before time and money is spent preparing the record and the briefs for consideration by the reviewing court.'" (*Panizzon*, *supra*, 13 Cal.4th at pp. 75-76.) Section 1237.5 "should be applied in a strict manner" and does "not invite consideration of the peculiar facts of the individual appeal"; instead, it "effectively precludes [ad hoc] dispensations of this sort, which are 'squarely contrary' to its terms." (*Mendez*, *supra*, 19 Cal.4th at p. 1098.) This Court has emphasized that a defendant cannot "obtain review of certificate issues" except by complying with the rules "fully, and, specifically, in a timely fashion." (*Id.* at p. 1099.) "Even when a defendant purports to challenge only the sentence imposed, a certificate of probable cause is required if the challenge goes to an aspect of the sentence to which the defendant agreed as an integral part of the plea agreement." (*People v. Johnson* (2009) 47 Cal.4th 668, 678; accord, *Panizzon*, at pp. 76-78.)

There are only two exceptions to the certificate requirement: (1) appeals challenging the denial of a motion to suppress evidence, as explicitly authorized by section 1538.5, subdivision (m); and (2) "postplea claims, including sentencing issues that do not challenge the validity of the plea." (*People v. Cuevas* (2008) 44 Cal.4th 374, 379; see rule 8.304(b)(4).) "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. [Citation.] 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. [Citations.]" (*People v. Buttram* (2003) 30 Cal.4th 773, 781-782, internal quotation marks omitted.) For example, when the parties negotiate a maximum prison term, they "leave to judicial discretion the proper sentencing choice within the agreed limit," and "appellate issues relating to this reserved discretion are therefore outside the plea bargain and cannot constitute an attack upon its validity." (*Id.* at p. 789, fn. omitted.) By contrast, where "the parties agree to a *specified* sentence, any challenge to that sentence attacks a term, and thus the validity, of the plea itself." (*Ibid.*)

Appellant agreed to a nine-year prison term, including a five-year enhancement imposed under section 667, subdivision (a)(1). (CT 3-5, 24-36.) By requesting a remand under SB 1393 to allow the trial court to strike or dismiss the enhancement—which comprised over half of his stipulated sentence—appellant attacks the validity of his plea. Because "a challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself," it was "incumbent upon [appellant] to seek and obtain a probable cause certificate in order to attack the sentence on appeal." (*Panizzon, supra*, 13 Cal.4th at

p. 79; see also *In re Chavez* (2003) 30 Cal.4th 643, 650, fn. 3 [reiterating *Panizzon*].) His failure to do so requires dismissal of the appeal. (*Mendez, supra*, 19 Cal.4th at pp. 1096, 1099; see also *People v. Enlow* (1998) 64 Cal.App.4th 850, 852-854 [holding a certificate was required for an appeal challenging a stipulated sentence based on a statutory amendment reducing punishment for recidivist auto theft].)

Although it acknowledged that a challenge to a stipulated sentence "ordinarily" requires a certificate of probable cause, the Court of Appeal agreed with the Second District Court of Appeal's conclusion in *People v. Hurlic* (2018) 25 Cal.App.5th 50 that "the ordinary rule does not apply when the challenge is based on a retroactive change in the law." (*Stamps, supra*, 34 Cal.App.5th at p. 121.) In finding that exception to section 1237.5, the Court of Appeal necessarily resolved in appellant's favor his claim that SB 1393 entitled him to a remand for resentencing. Curiously, it also found that the trial court could deny resentencing on remand by deeming SB 1393 incompatible with the plea agreement. (See *Stamps*, at p. 124 ["In exercising its discretion, the trial court is not precluded from considering whether [striking the prior] would be incompatible with the agreement on which defendant's plea was based"].) That contradictory result well illustrates the sound basis for decisions of this Court holding that appellate courts lack the power to dispense with the certificate requirement based on the view that a defendant's claim is meritorious.

In *Mendez, supra*, 19 Cal.4th 1084, this Court stated that without a certificate of probable cause, "the Court of Appeal generally may not proceed to the merits of the appeal, but must order dismissal thereof." (*Id.* at p. 1096.) It explained that "the search for 'judicial economy' in the expedient disposition of the individual appeal and its peculiar issues ha[d] been costly" and "must be abandoned" in favor of strict compliance with section 1237.5. (*Id.* at p. 1098.) That section "lays down a 'condition

precedent' to the taking of an appeal within its scope" and constitutes "a general 'legislative command' to defendants," not "an authorization for 'ad hoc dispensations' from such a command by courts." (*Ibid.*)

By creating a new exception to the certificate requirement based on the perceived merit of the claim, the Court of Appeal here and in *Hurlic* squarely contradicted the terms of section 1237.5 and this Court's express holding in *Mendez* that the provision "should be applied in a strict manner." (*Mendez*, *supra*, 19 Cal.4th at p. 1098.) "Strict adherence" to the certificate requirement is "vital" because judgments entered upon pleas of guilty or no contest "represent the vast majority of felony and misdemeanor dispositions in criminal cases." (*Chavez*, *supra*, 30 Cal.4th at p. 654, fn. 5.) Indeed, permitting noncertificate appeals to seek an exercise of judicial sentencing discretion that is incompatible with the stipulated sentence provisions of countless felony plea agreements would impose a significant burden on the state's criminal justice system. That cost would be particularly unwarranted in the context of plea bargains for specified sentences that by their terms preclude the court's exercise of sentencing discretion and which have already been approved and imposed by the trial court.

It must be remembered that the right to appeal is "subject to complete legislative control," meaning the Legislature "has the power to change the procedure, limit the right, or even abolish the right to appeal altogether." (*People v. Callahan* (1997) 54 Cal.App.4th 1419, 1422; *People v. Mazurette* (2001) 24 Cal.4th 789, 792 ["'It is settled that the right of appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute'"].) Thus, for example, while an appellate court generally has the authority to reach a question that has not been preserved for review by a party, "it is in fact *barred* when the issue involves the admission (Evid. Code, § 353) or exclusion (*id.*, § 354) of evidence." (*People v. Williams* (1998) 17 Cal.4th 148, 161, fn. 6, italics added.)

Likewise, by enacting section 1237.5, the Legislature has *barred* the Courts of Appeal from considering plea appeals raising issues that concern the validity of the plea unless the defendant has first obtained a certificate of probable cause. (See *Chavez, supra*, 30 Cal.4th at p. 646.)

Requiring strict compliance with section 1237.5, moreover, does not impose an undue hardship on defendants with meritorious claims. In order to obtain a certificate of probable cause, such a defendant need only demonstrate that his or her claim "involves an honest difference of opinion" and is not "clearly frivolous or vexatious." (*Ribero, supra*, 4 Cal.3d at p. 63, fn. 4.) Section 1237.5 also does not limit the issues that may be raised on appeal once a certificate of probable cause has been obtained, meaning a defendant may raise cognizable claims not identified in the statement of grounds or the trial court's certificate of probable cause. (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1177.) "If the trial court wrongfully refuses to issue a certificate, the defendant may seek a writ of mandate from the appellate court." (*Johnson, supra*, 47 Cal.4th at p. 676.) If the defendant is precluded from securing a certificate within the time limits of rules 8.304(b) and 8.308(a),[4] he may file a petition for writ of habeas corpus on grounds outside the trial record that do not involve an attempt to extend the time for appeal or to avoid the certificate requirement. (Compare *In re Brown* (1973) 9 Cal.3d 679, 682-683 with *In re Harrell* (1970) 2 Cal.3d 675, 705-706.)

But where, as here, a defendant fails to obtain a certificate to attack the agreed sentence, the Court of Appeal may not carve out an ad hoc exception to the requirement in order to reach an issue that it concedes

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[4] Together, rules 8.304(b) and 8.308(a) provide that a defendant appealing after a plea of guilty or no contest must obtain a certificate of probable cause within 80 days of the entry of judgment.

would otherwise be precluded from consideration. (See *Mendez*, *supra*, 19 Cal.4th at p. 1098.) "[T]he purposes behind section 1237.5 will remain vital only if appellate courts insist on compliance with its procedures." (*Panizzon*, *supra*, 13 Cal.4th at p. 89, fn. 15.) Section 1237.5's purpose of screening out frivolous claims can only be effectuated if the certificate requirement is strictly applied. Accordingly, the Court of Appeal erred in departing from this Court's established precedent requiring strict compliance with section 1237.5.

II. RETROACTIVE APPLICATION OF SENATE BILL NO. 1393 DOES NOT OBVIATE THE CERTIFICATE REQUIREMENT FOR AN APPEAL FROM A STIPULATED SENTENCE

There is no dispute that SB 1393 applies retroactively to nonfinal judgments. (See *Stamps*, *supra*, 34 Cal.App.5th at p. 120.) Under *Estrada*, *supra*, 63 Cal.2d 740, when the Legislature reduces punishment or provides the trial court with discretion to impose a lesser penalty, courts generally assume that the Legislature intends the amendment to apply to judgments not final as of the new law's effective date. (*People v. Superior Court* (*Lara*) (2018) 4 Cal.5th 299, 307-308 & fn. 5.) Thus, because SB 1393 provides a possibility of a reduced sentence, it applies retroactively to nonfinal judgments, like appellant's. (*Garcia*, *supra*, 28 Cal.App.5th at p. 973.) It does not follow, however, that the certificate requirement does not apply to appeals raising challenges to an agreed sentence based on the new law.

A. Decisions of the Courts of Appeal on the Effect of Recent Postplea Amendatory Sentencing Legislation on the Certificate Requirement

The Courts of Appeal are divided on whether a certificate of probable cause is required for challenges to a stipulated sentence based on postplea amendatory sentencing legislation. As discussed below, while many have found that the certificate requirement still applies, the Court of Appeal here

reached the opposite conclusion, placing heavy reliance on *Hurlic*, *supra*, 25 Cal.App.5th 50, which addressed the application of Senate Bill No. 620 (SB 620) (2017-2018 Reg. Sess.) concerning firearm enhancements. (See *Stamps*, *supra*, 34 Cal.App.5th at pp. 121-122; *Hurlic*, at pp. 53-54.) Like SB 1393, SB 620 grants discretion to strike or dismiss enhancements that trial courts previously lacked. (*Hurlic*, at p. 54.)

In *Hurlic*, the defendant pleaded no contest to attempted murder and admitted a 20-year sentencing enhancement for the personal discharge of a firearm under section 12022.53, subdivision (c), in exchange for a 25-year prison term and the dismissal of a premeditation allegation and two other charges of attempted premeditated murder. (*Hurlic*, *supra*, 25 Cal.App.5th at pp. 53-54.) The month after sentencing, the Governor signed SB 620, which amended section 12022.53 to grant trial courts discretion to strike firearm enhancements. Defendant appealed without obtaining a certificate of probable cause, seeking a remand for the trial court to exercise its discretion to strike the firearm enhancement under the new law. (*Id.* at p. 54.)

The *Hurlic* court agreed with the defendant that a certificate of probable cause was not required. Although *Hurlic* acknowledged that a certificate is normally required where a defendant challenges a "specific, agreed-upon sentence," it found that a "second line of authority . . . governing the retroactivity of new criminal statutes" trumps the certificate requirement. (*Hurlic*, *supra*, 25 Cal.App.5th at pp. 55-57.) *Hurlic* provided "three reasons" for its conclusion: first, because under this Court's decisions in *Doe v. Harris* (2013) 57 Cal.4th 64 (*Doe*) and *Harris v. Superior Court* (2016) 1 Cal.5th 984 (*Harris*), a postplea change in law is deemed to have been incorporated into the terms of that plea, the defendant's attempt to take advantage of the change in law is not an attack on the plea (*Hurlic*, at p. 57); second, "dispensing with the certificate of

probable cause requirement" would "better implement[] the intent behind that requirement" (*id.* at pp. 57-58); and third, a "conflict" between the retroactive application of such legislation to nonfinal cases and section 1237.5's certificate requirement should be resolved in favor of the more specific and later-enacted statute (*id.* at p. 58).

The Sixth District Court of Appeal followed *Hurlic* in *People v. Baldivia* (2018) 28 Cal.App.5th 1071, which the Court of Appeal below cited as additional support for its holding. (See *Stamps*, *supra*, 34 Cal.App.5th at pp. 121-122.) Like *Hurlic*, *Baldivia* held a defendant who agreed to a stipulated sentence was entitled to a remand under SB 620 regardless of the failure to obtain a certificate of probable cause. (*Baldivia*, at pp. 1073-1074.) *Baldivia* agreed with *Hurlic* that a certificate of probable cause was not required for the defendant's appeal because his plea agreement was deemed to incorporate future retroactive changes in the law, describing this reason for its holding as "dispositive." (*Baldivia*, at p. 1077.)

In contrast to *Hurlic* and *Baldivia*, a number of decisions by the Courts of Appeal have applied the certificate requirement, dismissing appeals in which the defendant sought a remand for the trial court to exercise its new sentencing discretion with respect to an agreed sentence. (See *Kelly*, *supra*, 32 Cal.App.5th 1013, review granted June 12, 2019, S255145; *People v. Fox* (2019) 34 Cal.App.5th 1124, review granted and further action deferred July 31, 2019, S256298; *People v. Galindo* (2019) 35 Cal.App.5th 658, review granted and further action deferred Aug. 28, 2019, S256568; *People v. Williams* (2019) 37 Cal.App.5th 602; see also *People v. Alexander* (2019) 36 Cal.App.5th 827 (dis. opn. of Needham, J.).)

In *Fox*, the defendant pleaded guilty in exchange for a 15-year prison sentence, which included a 10-year firearm enhancement. On appeal, he claimed no certificate was required to request a remand pursuant to SB 620

to have the trial court strike the enhancement. (*Fox*, *supra*, 34 Cal.App.5th at pp. 1126-1127.) Over a dissent, *Fox* rejected appellant's claim as well as the rationale in *Hurlic*. *Fox* was particularly critical of *Hurlic*'s application of the general rule that plea agreements incorporate subsequent changes in the law, noting that the rule "pertains only to changes that the Legislature or electorate '"intended to apply"' to the parties to plea agreements." (*Fox*, at pp. 1134-1135.) *Fox* acknowledged that SB 620 applied retroactively to all judgments not final when the law went into effect, but concluded that the new law did not entitle the defendant to have the trial court exercise its discretion to strike a portion of a stipulated sentence "without regard to other legal requirements," such as those contained in section 1237.5. (*Id.* at p. 1134.) Accordingly, *Fox* dismissed the appeal for lack of a certificate. (*Id.* at p. 1140.)[5] Appellant's appeal likewise should be dismissed for his failure to secure a certificate, regardless of SB 1393's retroactive application to nonfinal judgments.

B. The Incorporation Theory of *Doe* and *Harris*, Upon Which the Court of Appeal Relied, Does Not Apply to This Case

1. Neither *Doe* nor *Harris* addressed the certificate requirement; moreover, the legislative changes in those cases expressly applied to defendants convicted by plea

Hurlic principally dispensed with the certificate requirement because the plea agreement did "not contain a term incorporating only the law in existence at the time of execution" and, therefore, the "plea agreement [would] be 'deemed to incorporate' the subsequent enactment of Senate Bill No. 620," thus giving the defendant "the benefit of its provisions

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[5] *Galindo* and *Williams*, as well as Justice Needham's dissenting opinion in *Alexander*, followed the reasoning of *Fox*.

without calling into question the validity of the plea." (*Hurlic*, *supra*, 25 Cal.App.5th at p. 57, fn. omitted.) *Hurlic* relied on this Court's decisions in *Doe*, *supra*, 57 Cal.4th 64 and *Harris*, *supra*, 1 Cal.5th 984, both of which involved the general rule that a plea agreement is "deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy." (*Hurlic*, at p. 57, internal quotation marks omitted.) *Doe* and *Harris* had no occasion to consider the certificate requirement. "As is well established, a case is authority only for a proposition actually considered and decided therein." (*Chavez*, *supra*, 30 Cal.4th at p. 656.) Thus, *Hurlic*'s extensive reliance upon *Doe* and *Harris*, neither of which addressed the issue at hand, is fatal to its reasoning. Moreover, unlike SB 620 and SB 1393, the legislative changes at issue in *Doe* and *Harris* were made expressly applicable to the defendants' plea agreements and were, thus, legislatively incorporated into the agreements.

Doe addressed a question certified to this Court by the Ninth Circuit Court of Appeals concerning the impact of amendments to the Sex Offender Registration Act (§ 290 et seq.) on Doe's plea bargain. The amendments made new public notification provisions explicitly applicable to every person subject to the sex-offender registration requirement, which included Doe. (*Doe*, *supra*, 57 Cal.4th at pp. 65-67.) In holding "that the general rule in California is that the plea agreement will be '"deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy"'" (*id.* at p. 66, quoting *People v. Gipson* (2004) 117 Cal.App.4th 1065, 1070), this Court explained that parties to a plea agreement are not insulated "from changes in the law *that the Legislature has intended to apply to them*" (*Doe*, at p. 66, italics added). Noting the Legislature had "specifically and expressly mandated that the

public notification provisions of the law are 'applicable to every person described in this section, without regard to when his or her crimes were committed'" (*id.* at pp. 66-67, quoting § 290.46, subd. (m)), this Court concluded the amendments were "applicable to Doe's conviction" (*Doe*, at p. 67).

Thereafter, in *Harris*, this Court considered whether the passage of Proposition 47 would allow the prosecution to withdraw from a prior plea agreement if the defendant petitioned for recall and resentencing under newly enacted section 1170.18. (*Harris*, *supra*, 1 Cal.5th at p. 989.) That section expressly permits a "person currently serving a sentence for a conviction, *whether by trial or plea*, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section" to petition the trial court that entered the earlier judgment for a recall of the sentence and to be resentenced as a misdemeanant. (§ 1170.18, subd. (a), italics added; *Harris*, at p. 989.) Citing *Doe* for the general rule that "entering into a plea agreement does not insulate the parties 'from changes in the law that *the Legislature has intended to apply to them*'" (*Harris*, at p. 991, italics added by *Harris*), this Court found that "[b]y expressly mentioning convictions by plea, Proposition 47 contemplated relief to all eligible defendants" (*ibid*). For this reason, defendants convicted by plea could petition the trial court to have their convictions and sentences reduced *as authorized by the legislation*, but, notably, could not obtain relief by filing an *appeal* challenging the legality of their sentence. (*People v. Dehoyos* (2018) 4 Cal.5th 594, 597.)

Doe and *Harris* make clear that the general rule that plea agreements incorporate subsequent changes in the law pertains only to changes the Legislature or electorate "'intended to apply to'" the parties to plea agreements—a limitation that *Fox* characterized as "crucial." (*Fox*, *supra*, 34 Cal.App.5th at p. 1135.) In both *Doe* and *Harris*, the language of the

statutes at issue reflected an intent that the new law apply to defendants convicted by plea. In *Doe*, the new law applied to "'*every person*'" required to register as a sex offender "'without regard to when his or her crimes were committed'" (*Doe*, *supra*, 57 Cal.4th at pp. 66-67, italics added), while section 1170.18 created a procedure by which defendants serving sentences for "'a conviction, *whether by trial or plea*,'" of certain nonviolent felony crimes could petition to be resentenced (*Harris*, at p. 991, italics added by *Harris*). With respect to SB 620, *Fox* found "no such intent." (*Fox*, at p. 1136.)

2. Senate Bill No. 1393 does not encompass stipulated sentences; even if it does, a certificate is still required to seek resentencing on direct appeal

Unlike the laws considered in *Doe* and *Harris*, SB 1393 evinces no intent that its provisions apply to defendants who agreed to stipulated sentences. The bill amended section 1385 to delete former subdivision (b), which formerly had prohibited trial courts from striking the prior serious felony enhancement. As the Court of Appeal in *Galindo* concluded, "nothing in the language or legislative history of Senate Bill 1393 . . . suggests the Legislature intended to grant trial courts discretion to reduce stipulated sentences to which the prosecution and defense have already agreed in exchange for other promises. Neither the words of the statute itself nor the legislative history reference plea bargaining, nor do they express an intent to overrule existing law that once the parties agree to a specific sentence, the trial court is without power to change it unilaterally." (*Galindo*, *supra*, 35 Cal.App.5th at p. 671.) Because "the requirement that later laws are incorporated into the plea bargain applies only to changes that were *intended* to apply to defendant" (*ibid.*), SB 1393 did not affect Galindo's plea, which, like appellant's plea, stated "a specific, agreed-upon sentence that had already been accepted and imposed by the trial court, not

a sentence which granted the trial court discretion to select the sentence" (*id.* at p. 670).

That SB 1393 applies retroactively to nonfinal judgments under *Estrada* does not alter the analysis. Although under *Estrada*, we infer from the Legislature's silence that it intended the ameliorative amendment to apply retroactively, it does not follow that the Legislature intended the new law to be incorporated into plea agreements, like appellant's, that removed the trial court's sentencing discretion. It is not always the case that a defendant whose judgment is not final is automatically entitled to the benefit of new, ameliorative legislation. (See *People v. Conley* (2016) 63 Cal.4th 646, 661 [disagreeing with defendant's reading of *Estrada* as holding "that 'a defendant whose judgment is not final is *entitled* to the benefit of a lighter penalty in the absence of a clear indication to the contrary"].) As *Fox* explained, "*whether* the new law should apply" is not the same inquiry as "*how* the new law should apply." (*Fox, supra*, 34 Cal.App.5th at p. 1137.) The former addresses whether an amendment should prevail over the earlier version of the statute; if so, the latter addresses whether a specific defendant qualifies for relief under the amended law. (*Id.* at pp. 1136-1137.) If, as the Court of Appeal appeared to believe, the dispositive fact is that newly amended section 1385 prevails over section 1237.5, then a defendant whose agreed sentence included a prior serious felony enhancement "after Senate Bill [No. 1393] took effect and [who] is sentenced *today* would be entitled to have the trial court exercise its discretion to strike the enhancement, violating the plea agreement, because the statutory amendments undoubtedly now 'apply' any time a defendant is sentenced." (*Id.* at p. 1137.) That result cannot be right.

Moreover, "*Estrada* cannot be read to authorize more beneficial treatment under [the new law] for defendants who were sentenced before

[its effective date], and whose judgments happened to be nonfinal on that date, than it does for defendants sentenced after that date." (*Fox*, *supra*, 34 Cal.App.5th at p. 1137.) The position advocated by *Hurlic*, and by extension the Court of Appeal here, "implies that, even though a certificate of probable cause is mandated for attacks on plea bargains reached after the effective date of SB 1393 (or SB 620), no certificate would be needed for attacks against plea bargains reached before the law was even in existence." (*Alexander*, *supra*, 36 Cal.App.5th at p. 844 (dis. opn. of Needham, J.).) Such a "curious result" cannot be what the Legislature intended. (See *ibid.*)

"[D]efendants enter plea bargains all the time in which they give up the opportunity for the trial court to exercise its discretion in a way that might otherwise benefit them." (*Fox*, *supra*, 34 Cal.App.5th at p. 1137.) This Court has made clear that a negotiated plea bargain, once approved by the trial court, binds both the parties and the court. (*People v. Segura* (2008) 44 Cal.4th 921, 929-930.) *Estrada* retroactivity does not overrule this Court's precedent that once the trial court accepts the terms of the negotiated plea, "'[it] lacks jurisdiction to alter the terms of a plea bargain so that it becomes more favorable to a defendant unless, of course, the parties agree.'" (*Id.* at p. 931.)

Supporting this conclusion, several decisions by the Courts of Appeal hold that where the parties agree to a specific sentence, the defendant's attempt to reduce that sentence in light of an ameliorative interpretation of applicable sentencing law still constitutes an attack on the validity of the plea. After *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 held that the Three Strikes law does not remove a trial court's discretion under section 1385 to strike prior felony convictions (*id.* at pp. 529-530), the defendant in *People v. Cunningham* (1996) 49 Cal.App.4th 1044 appealed and sought a remand for the trial court to exercise its discretion whether to strike his prior felony conviction (*id.* at p. 1047). Although this Court made

its decision in *Romero* "fully retroactive" and authorized defendants to "raise the issue on appeal" (*Romero*, at p. 530, fn. 13), *Cunningham* held the defendant was not entitled to a *Romero* remand because he had entered a plea agreement with a stipulated sentence (*Cunningham*, at pp. 1047-1048). *Cunningham* explained, "Defendant cites no authority, nor have we found any, allowing a trial court to breach the bargain by striking the prior to impose less than the 32 months agreed upon. While no bargain or agreement can divest the court of the sentencing discretion it inherently possesses, a judge who has accepted a plea bargain is bound to impose a sentence within the limits of that bargain. A plea agreement is, in essence, a contract between the defendant and the prosecutor to which the court consents to be bound. Should the court consider the plea bargain to be unacceptable, its remedy is to reject it, not to violate it, directly or indirectly." (*Ibid.*, internal quotation marks and citations omitted.)

Similarly, in *People v. Cepeda* (1996) 49 Cal.App.4th 1235, disapproved on another ground by *Mendez, supra*, 19 Cal.4th at page 1098, the Court of Appeal concluded that the defendant was "estopped" from seeking a *Romero* remand because he had pleaded guilty in exchange for a stipulated sentence of eight years. (*Id.* at pp. 1238-1340.) *Cepeda* relied on case law holding "'that defendants who have received the benefit of their bargain should not be allowed to "trifle with the courts" by attempting to better the bargain through the appellate process,'" even where "'the trial court acts in excess of jurisdiction'" in reaching the length of the stipulated prison term. (*Id.* at p. 1239, quoting *People v. Nguyen* (1993) 13 Cal.App.4th 114; see also *Hester, supra*, 22 Cal.4th at p. 295 [noting exception to rule that defendant may challenge unauthorized sentence on appeal despite failure to object where defendant has "pleaded guilty in return for a *specified* sentence"].) Notably, this Court disapproved of *Cepeda*'s decision reaching the merits of the defendant's claim because

defendant "belatedly obtained a certificate of probable cause" (*Cepeda*, at p. 1237), holding that the requirements of section 1237.5 "should be applied in a strict manner" (*Mendez*, at p. 1098).

After *Cepeda*, the Court of Appeal in *People v. Smith* (1997) 59 Cal.App.4th 46 granted a defendant's request for a *Romero* remand where the defendant admitted a prior strike as part of a negotiated plea, but did not agree to a stipulated sentence. (*Id.* at p. 48.) *Smith* distinguished *Cunningham* and *Cepeda* on the basis that the "indicated sentences [in those cases] were exactly what the defendants got, and a remand for a *Romero* exercise of discretion *would have violated the bargain.*" (*Id.* at p. 51, italics added.)

The foregoing cases lend support to the conclusion that a challenge to a stipulated sentence based on an ameliorative change in the applicable law—or interpretation of that law—is nevertheless a challenge to the validity of the plea. Where the parties agree that only one sentence is acceptable, allowing the court to exercise its discretion to reduce that sentence violates the terms of the plea. *Estrada* retroactivity does not mean the Legislature, in enacting SB 1393, has authorized courts to disregard longstanding principles of plea negotiation in order to enable defendants who have agreed to a specified term for a prior serious felony enhancement to avoid that term yet retain the other benefits of their bargain. Rather than infer such intent from the Legislature's silence, it is sound policy to require the Legislature to state its intent explicitly, as it did with respect to the statute at issue in *Doe* and as the electorate did in *Harris*.

Even if the Legislature intended for SB 1393 to be incorporated into past plea agreements with stipulated sentences, that intent would not obviate the certificate requirement for appeals challenging the terms of those agreements under the new law. As explained, the certificate requirement does not turn on the merits of a defendant's claim—e.g.,

whether he has correctly ascertained the Legislature's intent that the new law applies to his plea deal. (See *Mendez*, *supra*, 19 Cal.4th at p. 1096 [absent a certificate of probable cause, "the Court of Appeal generally may not proceed to the merits of the appeal, but must order dismissal thereof"]; see also *People v. Puente* (2008) 165 Cal.App.4th 1143, 1149 ["In the absence of full compliance and a certificate of probable cause, the reviewing court may not reach the merits of any issue challenging the validity of the plea, but must order dismissal of the appeal"].) Nonetheless, *Hurlic* and the decisions following it appear to advocate such a position. Under the reasoning of those decisions, because a defendant is correct (in their view) that the new law is incorporated into the plea agreement, a challenge to the agreed-upon sentence is not an attack on the validity of the plea (when viewed retroactively in light of the merits of the appeal). Therefore, a certificate of probable cause is not required. That argument, however, does not withstand scrutiny. Whether or not appellant is correct that SB 1393 is incorporated into his plea agreement, by seeking to change the sentence the parties agreed would be imposed as part of the plea bargain, he attacks the validity of his plea. A certificate of probable cause, therefore, was required.

C. Dispensing with the Certificate Requirement Does Not Further the Intent Behind the Requirement, Nor Is Doing So Compelled by the Rules of Statutory Construction

Hurlic's second and third reasons for dispensing with the certificate requirement—that doing so furthers the intent behind the requirement and is compelled by the rules of statutory construction—are also unpersuasive. (See *Hurlic*, *supra*, 25 Cal.App.5th at pp. 57-58.)

According to *Hurlic*, if "a defendant who enters a plea of guilty or no contest must go through the additional step of seeking and obtaining a certificate of probable cause to avail himself or herself of the advantage of

ameliorative laws like Senate Bill No. 620 that are otherwise indisputably applicable to him or her, the incentive to enter a plea—or, at minimum, the incentive to do so expeditiously if legislation or voter initiative along these lines is being contemplated—is reduced. And where, as here, the defendant's entitlement to a new law's retroactive application is undisputed, an appeal seeking such application is neither 'frivolous' nor 'vexatious,' thereby obviating any need for section 1237.5's screening mechanism." (*Hurlic, supra*, 25 Cal.App.5th at p. 58.)

Galindo soundly rejected this reason for eschewing the certificate requirement, explaining, "We seriously question whether defendants (or their counsel) would be dissuaded from negotiating and entering plea bargains because they need to obtain a certificate of probable cause to pursue an appeal. It seems much more likely that the incentive for both parties to agree to a bargain for a specified number of years is reduced by a rule allowing the trial court to unilaterally modify that bargain at some point in the future without the parties' consent." (*Galindo, supra*, 35 Cal.App.5th at p. 672.) Likewise, Justice Needham in his dissent in *Alexander* found it "difficult to believe that a defendant, content with serving a specified number of years to avoid trial and the potential for additional convictions and a longer sentence, would shun the deal merely because, if in the future some change in the law would shave even more years off his sentence, he would have to file a piece of paper stating why the new law applies (which he would have to establish eventually anyway). [Citation.]" (*Alexander, supra*, 36 Cal.App.5th at p. 846 (dis. opn. of Needham, J.).)

The reasoning of *Galindo* and Justice Needham in *Alexander* defeat *Hurlic*'s second proffered reason for abandoning the requirements of section 1237.5. It makes little sense that the certificate requirement would discourage parties from entering into plea agreements on the chance that a

new, ameliorative law might pass of which they could only take advantage on direct appeal by first filing a certificate of probable cause. Furthermore, that a statute may be enacted sometime in the future providing for the possibility of a reduced punishment is simply one of many eventualities that, had they been known to the defendant at the time, might have discouraged him from accepting the terms of the plea bargain. Considerations surrounding the decision to plead guilty "frequently present imponderable questions for which there are no certain answers; judgments may be made that in the light of later events seem improvident, although they were perfectly sensible at the time." (*Brady v. United States* (1970) 397 U.S. 742, 756-757.) But that is not a reason to permit an attack on the validity of the plea where the Legislature has not clearly authorized one, especially without first securing a certificate of probable cause as generally required for such challenges.

Upholding the certificate requirement in cases such as appellant's furthers, rather than hampers, the intent behind the requirement. Assuming the Legislature did not intend SB 1393 to benefit defendants with stipulated sentences, then "the gatekeeping function of Penal Code section 1237.5 can only be fulfilled if the certificate of probable cause requirement is imposed." (*Alexander*, *supra*, 36 Cal.App.5th at p. 846 (dis. opn. of Needham, J.).) Even if the Legislature *did* intend for the amendment to benefit defendants like appellant, imposing the certificate requirement would still further section 1237.5's purpose by weeding out appeals in which the trial court is not inclined to exercise its new discretion to strike the enhancement.

Galindo and Justice Needham also persuasively rejected *Hurlic*'s third reason for creating a new exception to the certificate requirement based on the rule of statutory construction that where "two statutes conflict, courts give precedence to the later-enacted statute and precedence to the

more specific statute." (*Hurlic*, *supra*, 25 Cal.App.5th at p. 58.) According to *Hurlic*, that rule "favor[ed] application of Senate Bill No. 620 over section 1237.5," because the new legislation was "the later-enacted statute" and "more specific because it deals with a particular sentencing enhancement, whereas section 1237.5 deals more generally with appeals from pleas." (*Id.* at p. 58.) However, neither SB 620 nor SB 1393 addresses plea appeals or the certificate requirement. As *Galindo* concluded, there is no conflict between SB 1393 and section 1237.5 and, "thus, the rule of statutory construction does not apply." (*Galindo*, *supra*, 35 Cal.App.5th at p. 673.) To the extent the statutes do conflict, as Justice Needham explained, they are readily harmonized: "SB 1393 applies retroactively, but not to convictions by plea bargains in which a condition of the plea was the specific sentence that defendant received." (*Alexander*, *supra*, 36 Cal.App.5th at p. 846 (dis. opn. of Needham, J.).)

If the later-and-more-specific rule of statutory construction applies at all, it does so quite differently than appellant will acknowledge. SB 1393's retroactive application to nonfinal judgments rests on *Estrada*'s incorporation of the common law exception for ameliorative legislation into section 3's requirement of prospective application of penal laws. Enacted in 1965 (see *People v. Ward* (1967) 66 Cal.2d 571, 575), section 1237.5 is more recent than section 3—the statute that informs what new penal amendments do or do not apply to pending appeals. Section 3 is a general statute applicable to all cases, whereas section 1237.5 is a specific statute applicable only to appeals from a plea of guilty or no contest in felony cases. The certificate requirement in section 1237.5 is a mechanism that enforces section 3 on appeal from guilty and no contest pleas in felony cases.

In sum, "S.B. 1393 does not overrule *Panizzon* or the certificate of probable cause statute." (*Kelly*, *supra*, 32 Cal.App.5th at p. 1018.) "Just

because [a new law] applies to [a defendant's] nonfinal judgment after a plea does not mean that [the defendant] 'is entitled to have the trial court exercise its discretion' under the new law without regard to other legal requirements." (*Fox, supra*, 34 Cal.App.5th at p. 1134.) SB 1393 (and SB 620) apply retroactively, except to convictions by plea bargains containing a stipulated sentence. Even if the new laws are incorporated into such plea bargains, a certificate of probable cause is still required to make operative any appeal claiming as much. Thus, there is no need to determine whether the authority regarding retroactivity "trumps" the authority governing certificates of probable cause, or which statute "prevails." (*Hurlic, supra*, 25 Cal.App.5th at pp. 57-58.)

D. To Avail Himself of the New Legislation, Appellant May Seek a Writ of Habeas Corpus to Withdraw His Plea

Not all defendants who enter into plea agreements that include admission to a prior serious felony conviction under section 667, subdivision (a), are excluded from the benefits of SB 1393. Those who entered pleas in exchange for an agreed-upon maximum sentence still stand to benefit from the new legislation, as they left the sentencing choice to the trial court's discretion, and therefore issues relating to that discretion are "outside the plea bargain and cannot constitute an attack upon its validity." (See *Buttram, supra*, 30 Cal.4th at p. 789, fn. omitted.) Those who agreed to a specific sentence and are still within the time limits of rules 8.304(b) and 8.308(a) may "seek to withdraw their pleas" by first obtaining "a certificate of probable cause—hardly as onerous a requirement as *Hurlic* suggests—to enable them to challenge the validity of their pleas" on direct appeal. (*Fox, supra*, 34 Cal.App.5th at p. 1139.) If they are successful in procuring a certificate and seeking a remand, however, they "will not be entitled to have the trial court exercise [its discretion under the new law]

unless the plea agreement is set aside, or modified with the People's agreement." (*Ibid.*)

As for those defendants, like appellant, who agreed to a specific sentence but were unable to procure a certificate within the applicable time limits, they are not without recourse. It appears their proper remedy is to file a habeas corpus petition before the finality of judgment in the trial court that seeks permission to withdraw the plea. They must provide sufficient evidence by affidavits and the like to establish that such relief would be in the interests of justice under section 1018.[6] In *Galindo*, the defendant, like appellant, entered his plea and was sentenced "well before" the enactment of SB 1393. (*Galindo*, *supra*, 35 Cal.App.5th at p. 669, fn. 4.) While that "effectively may have precluded him from seeking a certificate of probable cause based on Senate Bill [No.] 1393," *Galindo* found that "nothing prevented him from filing a petition for writ of habeas corpus on that basis." (*Ibid.*; see also *Williams*, *supra*, 37 Cal.App.5th at p. 605.)

The Court of Appeal here erroneously concluded that the trial court is empowered by SB 1393 to lop off half of appellant's stipulated sentence without allowing the prosecutor to withdraw from the agreement. It

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[6] Section 1018 provides: "On application of the defendant at any time before judgment or within six months after an order granting probation is made if entry of judgment is suspended, the court may, and in case of a defendant who appeared without counsel at the time of the plea the court shall, for a good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted." Notably, "[a]lthough section 1018 is limited on its face to the period before judgment, the courts have long permitted defendants to move to set aside the judgment as a means of allowing the defendant to withdraw the guilty plea after judgment." (*People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1617.) For such "postjudgment motions to withdraw a guilty plea, the courts have required a showing essentially identical to that required under section 1018." (*Ibid.*) "[T]he decision to grant the motion lies within the trial court's discretion." (*Ibid.*)

reached that conclusion despite the rule, acknowledged in *Hurlic*, that a trial court's acceptance of a plea agreement "'binds the court and the parties to the agreement.'" (*Hurlic, supra*, 25 Cal.App.5th at p. 56, quoting *Segura, supra*, 44 Cal.4th at p. 930.) A trial court that "'has accepted a plea bargain is bound to impose a sentence within the limits of that bargain'" (*Segura*, at p. 931), and is prohibited "from unilaterally modifying the terms of the [plea] bargain without affording—or after it has become impossible to afford—an opportunity to the aggrieved party to rescind the plea agreement and resume proceedings where they left off" (*People v. Kim* (2011) 193 Cal.App.4th 1355, 1361).

Relying on these foundational principles of plea negotiation, the Court of Appeal in *Kelly, supra*, 32 Cal.App.5th 1013 denied the defendant's request for a remand on direct appeal, noting that even if it remanded for resentencing under SB 1393, "the trial court would still be bound by the terms of the plea agreement which provides a floor and ceiling of 18 years state prison." (*Id.* at p. 1017.) Here, too, because the trial court approved and enforced appellant's plea agreement, including the agreed five-year term for the prior serious felony enhancement and the total nine-year prison term, it "'cannot change that bargain or agreement without the consent of both parties.' [Citations.]" (*Segura, supra*, 44 Cal.4th at p. 931.)

Requiring appellant and others in his position to seek their habeas remedy, instead of dispensing with the certificate requirement, honors section 1237.5 and effectively implements SB 1393 in a way that balances the rights of the parties. Of course, such a remedy would become unavailable once the judgment of conviction reaches finality, because the Legislature did not make the new law fully retroactive. And a habeas application that merely invokes SB 1393 would be denied summarily, because a defendant who challenges a plea of guilty or no contest may not circumvent the requirements of section 1237.5 by seeking a writ of habeas

corpus in an application that merely duplicates the appeal. (*Chavez, supra*, 30 Cal.4th at p. 651.) For the same reason, there would be no compelling reason for the Court of Appeal to treat current appeals raising claims like the one in this case without a certificate as a petition for writ of habeas corpus. Instead, the appeal should be dismissed absent exceptional circumstances. (*People v. Elder* (2014) 227 Cal.App.4th 1308, 1321 ["Routine granting of requests to treat improper appeals as writs where there are no exigent reasons for doing so would only encourage parties to burden appellate courts" (internal quotation marks omitted)].)

However, if the habeas applicant comes forward before the judgment's finality with sufficient evidence to show that, retrospectively speaking, the withdrawal of the plea is in the interests of justice, the trial court would be required to apply its usual discretion under section 1018 as though the new law had taken effect after the plea and before the original sentencing. Thus, requiring a defendant, like appellant, to file a habeas petition equalizes the treatment of offenders who were sentenced before or after the new legislation who attempt to unwind their plea bargains. By contrast, the remedy ordered by the Court of Appeal of a remand for resentencing on one component of the agreed sentence confers on defendants with negotiated pleas approved before the effective date of the legislation a benefit not given to any defendant sentenced afterward. Such a "curious result" cannot be what the Legislature intended. (See *Alexander*, *supra*, 36 Cal.App.5th at p. 844 (dis. opn. of Needham, J.).)

Finally, even if the Legislature intended SB 1393 to encompass plea agreements with stipulated sentences, there is no reason to infer that it also intended to alter the rule that parties to such agreements must obtain a certificate of probable cause to pursue an appeal challenging that sentence on direct appeal. Under such circumstances, a defendant in appellant's position should still file a petition for habeas corpus to request relief under

the new law. (See *People v. Fuhrman* (1997) 16 Cal.4th 930, 946, fn. 10 [rather than require a new sentencing hearing "in every case in which a defendant was sentenced under the Three Strikes law prior to our decision in *Romero* . . . we conclude that a defendant's rights will be fully and adequately protected by affording the defendant an opportunity to file a petition for writ of habeas corpus in the sentencing court . . ."].) On direct appeal, a certificate of probable cause is required.

CONCLUSION

The judgment of the Court of Appeal remanding under SB 1393 should be reversed.

Dated: September 11, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S OPENING BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 8,831 words.

Dated: September 11, 2019

XAVIER BECERRA
Attorney General of California

/s/ Elizabeth W. Hereford

ELIZABETH W. HEREFORD
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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Stamps**
No.: **S255843**

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 collecting and processing electronic and physical correspondence. 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. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On September 11, 2019, I electronically served the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on September 11, 2019, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

James S. Donnelly-Saalfield
First District Appellate Project
[Via TrueFiling Only]

First District Appellate Project
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The Honorable Nancy O'Malley
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The Honorable James P. Cramer
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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 September 11, 2019, at San Francisco, California.

T Pham	*/s/ T Pham*
Declarant	Signature

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