

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,)	Crim. No. S255371
)	
Plaintiff and Respondent,)	2 nd Crim. No. B290589
)	
vs.)	
)	
)	
MISAEEL VENCES MAYA,)	
)	
Defendant and Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF VENTURA COUNTY
HON. BRUCE A. YOUNG, JUDGE PRESIDING
SUPERIOR COURT NO. 2010031209

PETITION FOR REVIEW

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v.) Super Ct. No. 2010031209
)
)
MISAEL VENCES MAYA,)
)
Defendant and Appellant.)
_____)

PETITION FOR REVIEW

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

Appellant respectfully petitions for review following the published decision of the Court of Appeal, Second Appellate District, Division Six (per Gilbert, P.J.) filed on March 21, 2019 affirming the court’s denial of his motion for expungement. Justice Tangeman filed a dissenting opinion. A petition for rehearing was not filed. The Court of Appeal’s decision is attached to this petition in an appendix.

ISSUE PRESENTED FOR REVIEW

Appellant was convicted of felony possession of a controlled substance along with other felony offenses. He was sentenced to state prison. Following his release in 2012, he was placed in immigration custody. After the passage of Proposition 47, the drug conviction was redesignated as a misdemeanor under Penal Code section 1170.18, subdivision (g).¹ Appellant then sought to have the conviction expunged under section 1203.4a. The motion was denied after the court would not consider appellant's time spent in immigration detention as part of an honest and upright life. (RT 41, 53.)

Does section 1203.4a, subdivision (a) authorize a court to consider time spent in immigration custody after judgment of conviction as part of an "honest and upright life?"

NECESSITY FOR REVIEW

The instant case presents a novel issue about whether time spent in immigration or jail custody can be considered as part of "an honest and upright life" under section 1203.4a, subdivision (a). As the case is published with a dissenting opinion, this issue may reappear in different

¹ Hereinafter, all statutory references are to the Penal Code unless otherwise indicated.

appellate courts throughout the state. Thus, this Court's review might forestall inconsistent results if, for example, another Court of Appeal adopts the dissenting opinion of Justice Tangeman. In addition, if review is granted, then a superior court judge will not be bound by the majority decision because it will be deemed persuasive authority rather than binding precedent. (Cal. Rules of Court, rule 8.1115(e)(1).) This, in turn, will allow a superior court judge to fully consider all of the evidence presented by a defendant seeking expungement under similar circumstances.

Review is also necessary because the majority's opinion that time spent in immigration custody cannot count as part of an honest and upright life is inconsistent with the express language of the statute. (§1203.4a, subd. (a).) As the dissenting opinion notes, the one-year period set forth in section 1203.4a, subdivision (a) necessarily encompasses any time spent in custody because relief can be granted one year after pronouncement of the judgment of conviction. (*People v. Maya* (March 21, 2019, B290589) __ Cal.App.5th __ (dis. opn. of Tangeman, J.)) Thus, the statute contemplates that in the one-year time period between the pronouncement of judgment and the granting of the expungement motion, the defendant may have served a period of time in custody for the misdemeanor. As such, good behavior in custody can be considered by the court as part of an honest and upright life during that one-year time frame.

STATEMENT OF FACTS

As the facts are adequately set forth in the Court of Appeal's decision and in the briefs of the parties, a statement of facts is hereby omitted.

ARGUMENT

I. AS APPELLANT WAS SUBJECT TO IMMIGRATION DETENTION IMMEDIATELY AFTER HIS RELEASE FROM STATE PRISON, HIS GOOD BEHAVIOR DURING THIS PERIOD QUALIFIES AS AN HONEST AND UPRIGHT LIFE UNDER SECTION 1203.4a.

A. Introduction.

Due to the broad relief afforded by Proposition 47, previous felony convictions resulting in prison sentences can now be recalled or redesignated, and, thereby, reclassified as misdemeanors. (§1170.18.) After reclassification, the conviction is a misdemeanor for all purposes allowing a defendant to seek relief under section 1203.4a despite having served a prison term. (*People v. Khamvongsa* (2017) 8 Cal.App.5th 1239.)

However, for an immigrant defendant, the felony can be reclassified as misdemeanor but the defendant may still be subject to immigration detention following his release from state prison. Under section 1203.4a, subdivision (a) the defendant is required to have lived an honest and upright life since the pronouncement of judgment. (§1203.4a, subd. (a).) Due to immigration detention, this period of honest and upright living may entail a period of time that the defendant has spent or is spending in custody. As the defendant has no control over being placed in immigration detention, his good behavior while subject to immigration detention should qualify as an honest and upright life for expungement purposes.

The superior court in the instant case ruled that in determining

whether appellant lived an honest and upright life since the pronouncement of judgment, it would not consider good behavior while he was in custody. (RT 41, 53.) This included the time appellant spent in immigration detention since late 2012 when he was released from state prison. (RT 53, CT 51-52, 66.)

In addition, the court was concerned that appellant had not been placed under any form of supervision such as parole after his release from prison. (RT 39, 49-50.) This should not be a factor in determining whether an immigrant defendant can obtain expungement relief. Since appellant was immediately placed in immigration detention, he had no opportunity to prove himself on supervision.

Denying expungement relief to immigrants because they are subject to immigration detention is unfair because they may have no other way to establish that they have lived an honest and upright life since the pronouncement of judgment. Thus, the instant case implicates the policy considerations discussed in cases such as *People v. Cervantes* (2009) 175 Cal.App.4th 291 and *People v. Galvan* (2007) 155 Cal.App.4th 978, where immigrant probationers were subject to probation violations for reasons beyond their control.

As such, the order denying expungement should be reversed. The matter should be remanded so that court can consider whether appellant

lived an honest life while subject to immigration detention after being released from state prison.

B. Proceedings Below.

At the initial expungement hearing on April 11, 2018, defense counsel argued that appellant had led an honest and upright life while in custody. (RT 37.) The prosecution countered that appellant was placed directly into federal immigration custody after his release from state prison, and, therefore, did not establish that he led an honest and upright life. (RT 39.) The prosecution stated as follows:

I don't think it's appropriate given the circumstance. And I'm [*sic*] also want to point out that since his release in custody, he was not being supervised. He's never been supervised on PROS or PCRS because he went directly into federal custody. So there has been no period where he successfully or satisfactorily completed probation or even the post custody release because he was directly into federal custody. So there's been no period even to evaluate. And that's given his own situation. He put himself in the situation by getting eight DUIs in a matter of three years and doing a four-year prison commitment on the last DUI. (RT 39.)

Defense counsel responded that appellant's good behavior while in custody should qualify under section 1203.4a, subdivision (a) noting that people in custody frequently engage in criminal behavior. (RT 39.) In particular, defense counsel argued that appellant had been in some form of custody for eight years and had "lived an honest and upright life." (RT 40.)

Defense counsel requested expungement relief in count five on both statutory and discretionary grounds. (RT 40.)²

The court denied relief on statutory grounds and refused to exercise its discretion to grant relief. The court stated as follows:

I've heard the argument of counsel. You made your record. I disagree. I think the logic is flawed. Being in custody for substantial periods of time is calling that an honest and upright life. I disagree. You've made your record. I'm denying your request for expungement on all grounds. (RT 41.)

On May 21, 2018, appellant requested reconsideration of the court's denial of the expungement motion. (RT 43.) The record reflects that appellant was still subject to immigration detention at that point. (RT 43.) Defense counsel argued that expungement must be ordered if all of the conditions of section 1203.4a, subdivision (a) are met claiming that appellant had no arrests and had completed all custody conditions. (RT 45.)

The court noted that appellant had been placed in immigration custody after serving his prison term but ruled that his behavior in immigration custody could not qualify as an honest and upright life. The court stated as follows:

And as we know and commented about, [appellant] has never been released from custody as reflected on page 2 of the probation report. An argument might have been able to be

² See section 1203.4a, subdivision (b).

made if he was on Post Release Community Supervision but apparently that lasted for a matter of days before ICE picked him up and where he is in San Diego at this time in a federal detention facility. There's been no opportunity by the Court or probation or by parole officers to determine whether he leads a law abiding life when out of custody and I think that's what probation and parole and Post Release Supervision is all about. So I think your arguments are misplaced and your motion for reconsideration is denied. (RT 53.)

C. Expungement Statute Allows Court to Consider Defendant's Custodial Time As Part of Honest and Upright Life.

Section 1203.4a was adopted in 1963, approximately 28 years after section 1203.4. (*People v. Bradley* (1967) 248 Cal.App.2d 887, 889.) It is available as a remedy for defendants who were convicted of a misdemeanor but not granted probation. (*Id.*)

Under section 1203.4a, a court must grant expungement as follows:

Every defendant convicted of a misdemeanor and not granted probation, . . . at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her guilty plea . . . and enter a plea of not guilty . . . the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted . . .” (§1203.4a, subd. (a).)

In a recent decision, the Court of Appeal held that a defendant is

eligible for relief under section 1203.4a, subdivision (a) despite having served prison time for a felony when the offense is subsequently reclassified as a misdemeanor under section 1170.18, subdivision (g). (*People v. Khamvongsa, supra*, 8 Cal.App.5th at p. 1242.) “There is no dispute in this case that [defendant] successfully petitioned for the reclassification of her prior felony conviction to a misdemeanor under section 1170.18, subdivision (g). Based on the unambiguous language of section 1170.18, subdivision (k), the court must treat [defendant’s] prior conviction as a misdemeanor for all purposes, including when determining whether she qualifies for relief under section 1203.4a.” (*Khamvongsa, supra*, 8 Cal.App.5th at pp. 1244-1245.)

“In order to qualify for relief under section 1203.4a, subdivision (a), a defendant must have suffered a misdemeanor conviction, not be charged with or convicted of a subsequent crime, and have, since the date of that judgment, lived “an honest and upright life.”” (*Khamvongsa*, at p. 1243; *People v. Hamdon* (2014) 225 Cal.App.4th 1065, 1069.)

The court did not believe custodial time could qualify as honest and upright living for expungement purposes. (RT 41, 53.) However, nothing in section 1203.4a, subdivision (a) dictates where a defendant’s honest and upright life must be lived.

In theory, a defendant could live as a recluse in a cabin in a Northern

California mountain for several years after his release, and then seek expungement under section 1203.4a, subdivision (a) on the grounds that he had lived an honest and upright life since the pronouncement of judgment. While the reclusive defendant should obtain relief, his good behavior as a mountain man recluse is in many ways less praiseworthy than another defendant's good behavior while in custody. Other than arson and violation of fish and game regulations, the mountain man had little opportunity for misbehavior considering the relative lack of temptation.

In contrast, time spent in custody affords endless opportunity for malfeasance. Inmates engage in drug trafficking, sexual assault, organizing criminal enterprises, escape attempts, sale of contraband, extortion, gang activity, manufacturing weapons, gambling, violence against inmates and custodial officers, and witness intimidation. In fact, good behavior in such an environment is a testament to one's character. In addition, one objective in sentencing is to encourage "the defendant to lead a law abiding life in the future and deterring him or her from future offenses." (Cal. Rules of Court, rule 4.410, subd. (a)(3).) If the defendant engages in good conduct while in custody, then he is on the road to achieving a future law abiding life.

Furthermore, it is logically implicit in section 1203.4a, subdivision (a) that good behavior while in custody can be considered by a court entertaining an expungement motion.

Based on the plain language of section 1203.4a, subdivision (a), a defendant can seek relief one year after the pronouncement of judgment even if six months of that period was spent in jail serving the misdemeanor sentence. (*People v. Birkett* (1999) 21 Cal.4th 226, 231 [court should apply plain and ordinary meaning of statutory language].) Thus, if a defendant is ordered to serve 365 days for a misdemeanor conviction with no probation, then he can seek expungement one year after sentence is pronounced. (*People v. Chandlee* (1979) 90 Cal.App.3d Supp. 13, 19-20 [defendant was eligible for relief one year after conviction].) The statute does not require a defendant to wait one year after being released from jail. (*Id.*)

As such, a defendant need only live an honest and upright life one year since the pronouncement of judgment. This specific passage of time “is the date upon which eligibility for section 1203.4a relief attaches.” (*Chandlee*, at p. 20.) As a defendant who is sentenced to 365 days in jail would probably serve half of that sentence under section 4019, he would be technically eligible for expungement approximately six months after his release. Logic would dictate that the defendant’s good behavior while serving the misdemeanor sentence could be factored into whether he lived an honest and upright life one year since the pronouncement of judgment. Such custodial time might serve as the stepping stone for reform, and it would be an incentive for inmates serving a misdemeanor sentence to

behave in jail knowing the period would count for expungement purposes.

Furthermore, a judge entertaining the expungement motion might not consider six months of honest living after release a sufficient enough period of time for expungement purposes especially if the judge does not know how the defendant behaved while in custody. It appears the Legislature contemplated allowing the court to consider good behavior in custody as counting toward an honest and upright life. This is reasonable because the defendant may have participated in education and rehabilitation programs offered by the jail, completed his work assignments, or even performed a heroic act while in custody. (See §2935.) It is an unreasonable constraint on the court to prohibit it from considering such good behavior while in custody.

There is another sound reason for allowing a court to consider such good behavior in custody. Expungement relief set forth in section 1203.4a, subdivision (a) might be vital to a newly released defendant seeking employment. (See Cal. Code Regs., tit. 2, §7287.4, subd. (d)(1)(B).) If the custody period cannot be considered for expungement purposes, then the defendant might not be able to obtain employment as quickly after release. It appears the Legislature intended for such defendants to be able to obtain relief as soon as possible considering that employment might prevent recidivism.

Appellant's situation did not require the court to consider his behavior in state prison. In late 2012, he was placed in immigration detention immediately after being released from state prison. (CT 51-52, 66.) However, the same policy rationale applies to immigration detention as it does to custody in jail or prison. A defendant may be placed in immigration detention following release from county jail or state prison, and may be in need of speedy expungement relief for a variety of reasons. For a particular immigrant defendant, obtaining expungement relief in California may be critical to obtaining employment in his or her country of origin or may be vital to maintaining his or her social status in the home country. The court should be allowed to consider the defendant's good behavior in that custodial setting especially since he or she is subject to immigration custody for reasons beyond his or her control.

D. As Appellant's Placement in Federal Immigration Detention Was Involuntary, Matter Should Be Remanded So Court Can Assess Behavior While Subject to Detention.

As the court acknowledged, appellant was in federal custody at the time of the hearing. (RT 53.) The record shows that he was detained by immigration authorities in late December 2012 after being released from state prison. (CT 51-52, 66.)

The instant case implicates the policy concerns set forth in *People v. Cervantes*, *supra*, 175 Cal.App.4th 291, because appellant was unable to

satisfy a requirement of the lower court due to immigration detention.

In *Cervantes*, the trial court was aware that the defendant was an undocumented alien but agreed to place him on probation as part of a plea bargain in a domestic violence case. After defendant was placed on probation, he served an initial jail sentence but then failed to appear for a 30-day review hearing because immigration authorities took him into custody. As a result, the court revoked probation and sentenced him to a term of imprisonment. (*Id.*, at p. 293.)

The Court of Appeal found that defendant was not in violation of probation and reversed the revocation order. (*Id.*) It also found that immigration detention made compliance with the court's order impossible. After the defendant served an initial jail term, "the sheriff transferred [defendant] to the custody of the federal Immigration and Customs Enforcement agency (ICE). This created an insurmountable obstacle to defendant attending his [30-day] review hearing." (*Cervantes*, at p. 293.) Although the court found that the defendant did nothing to warrant a violation of probation, it found him unsuitable for probation due to his immigration status. (*Id.*, at p. 294.) "A court may not revoke probation unless the evidence supports 'a conclusion that the probationer's conduct constituted a willful violation of the terms and conditions of probation.'" (*Cervantes*, at p. 295; *People v. Galvan*, *supra*, 155 Cal.App.4th at p. 982.)

“Where a probationer is unable to comply with a probation condition because of circumstances beyond his or her control and defendant’s conduct was not contumacious, revoking probation and imposing a prison term are reversible error.” (*Cervantes*, at p. 295; *People v. Zaring* (1992) 8 Cal.App.4th 362, 379.)

In addition, the defendant’s situation in *Cervantes* was complicated by the immigration process itself. Despite a removal order from an immigration judge, the defendant remained in the United States. “There is no evidence that during the six-month period between the December 19 and June 19 hearings the federal immigration authorities had taken steps to remove Cervantes from the United States. That is not unusual. The immigration review process may involve several stages, from the administrative law judge (ALJ) decision, to the BIA, and ultimately to the Ninth Circuit Court of Appeals. This process may not equal the bureaucratic nightmare faced by Josef K. in Franz Kafka’s *The Trial*, but unfortunately it is often unpredictable and slow. ‘An alien whose removal order is administratively final is not necessarily immediately deported.’ (*Prieto-Romero v. Clark* (9th Cir. 2008) 534 F.3d 1053, 1058.) Thus, even after an ALJ and the BIA rule that an alien is deportable, he or she may remain in the United States for years after a federal court grants a stay pending review. [Citations omitted]. Moreover, aliens may be released on bond with

the approval of federal authorities pending the outcome of the administrative case.” (*People v. Cervantes, supra*, 175 Cal.App.4th at p. 296.)

In reversing, the Court of Appeal relied in part upon *People v. Galvan*. “In *Galvan*, the trial court revoked [defendant’s] probation and sentenced him to prison after he had been deported to Mexico and had returned to the United States. The Court of Appeal reversed. It concluded that, notwithstanding [defendant’s] detention and deportation, his probation could not be revoked without proof that he had willfully violated his probation reporting conditions. [Defendant] could not be penalized because of matters beyond his control, such as the actions of the immigration authorities, or because of his undocumented status.” (*Cervantes*, at p. 297; *People v. Galvan, supra*, 155 Cal.App.4th at p. 981-984.)

As there was no willful violation of probation in *Cervantes* or *Galvan* the orders revoking probation were in error. (*Cervantes*, at p. 297.)

Due to the slow immigration process, a defendant seeking expungement may have no alternative but to argue that he led an honest and upright life while in immigration custody. Thus, at the expungement hearing, appellant was in a situation similar to the defendants in *Cervantes* and *Galvan*. He should not have been precluded from showing that he lived an honest and upright life since the pronouncement of judgment because he

was placed in immigration detention. As the Court of Appeal noted, “the unpredictability of immigration appeals and the uncertainty about the speed of that process” are factors beyond an immigrant’s control. (*Cervantes*, at p. 298.)

Based on *Cervantes* and *Galvan*, the matter should be remanded so that the court can assess appellant’s behavior while subject to immigration detention after his release from state prison. In this process, appellant should be allowed to present any reliable evidence he can muster to establish good behavior while subject to immigration detention. The court on remand can then determine whether the requirements of section 1203.4a, subdivision (a) have been satisfied. If so, relief must be granted. (§1203.4a, subd. (a).)

Due to the large immigrant population in California, it is reasonable to infer that the Legislature contemplated granting expungement relief to immigrants under such circumstances. There is no requirement that a defendant be free from all possible forms of detention prior to seeking relief. The applicable provision only requires that the defendant is not “serving a sentence for any offense and is not under charge of commission of any crime.” (§1203.4a, subd. (a).) There is also no requirement about where a defendant must lead an honest and upright life. (*Id.*) As stated previously, an honest and upright life in immigration custody may have

more meaning than isolation in a mountain retreat. In addition, allowing relief to an immigrant under such circumstances can only promote good behavior while in detention, and allows a newly released defendant a better opportunity to seek employment.

II. CONCLUSION.

For the reasons set forth above, appellant respectfully requests that review be granted.

DATED: April 26, 2019

Respectfully Submitted,

Wayne C. Tobin

WORD COUNT

I, Wayne C. Tobin, declare as follows:

I am duly licensed to practice law in the State of California, and I am the attorney of record for appellant in case number B290589. I have examined the word count for the petition for review. The word count is 3893 words.

I declare under penalty of perjury under the laws of the State of California that the above information concerning the word count is true and correct and that I executed this declaration at Newbury Park, California on April 26, 2019.

Wayne C. Tobin

PROOF OF SERVICE BY MAIL

I, Wayne C. Tobin, declare as follows:

I am over eighteen years of age and not a party to the within action.

My business address is 1560-1 Newbury Road #346, Newbury Park, CA 91320. On April 26, 2019, I served the within

PETITION FOR REVIEW

on each of the following, by placing a true copy thereof in a sealed envelope with postage fully prepaid, in the United States mail at Newbury Park, California, addressed as follows:

Office of the State Attorney General 5 th Floor North Tower 300 South Spring Street Los Angeles, CA 90013	Misael Vences Maya 511 Santa Ana Blvd. Oakview, CA 93022
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Note: The Office of the State Attorney General was served this day via e-mail at the following address: docketingLAawt@doj.ca.gov

Ventura County District Attorney 800 S. Victoria Ave Ventura, CA 93009	Ventura County Superior Court 800 S. Victoria Ave POB 6489 Ventura, CA 93009 For delivery to the Hon. Bruce Young
--	--

The Court of Appeal was served electronically at 2d6.clerk6@jud.ca.gov

Note: The California Appellate Project was served this day with a copy of this document via: capdocs@lacap.com

I declare under penalty of perjury that the foregoing is true and correct and that I signed this declaration on April 26, 2019 at Newbury Park, California.

Wayne C. Tobin

APPENDIX

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MISAEEL VENCES MAYA,

Defendant and Appellant.

2d Crim. No. B290589
(Super. Ct. No. 2010031209)
(Ventura County)

COURT OF APPEAL - SECOND DIST.

FILED

Mar 21, 2019

DANIEL P. POTTER, Clerk

Awinters Deputy Clerk

A model prisoner is not necessarily a model citizen.

Misael Vences Maya appeals an order denying a motion to expunge his misdemeanor conviction for possession of methamphetamine. (Pen. Code, § 1203.4a [rehabilitation of misdemeanants]; Health & Saf. Code, § 11377, subd. (a).)¹ We affirm.

This appeal concerns the trial court's denial of Maya's request to expunge his conviction for possession of methamphetamine following his successful motion to reduce the felony conviction to a misdemeanor. In ruling against Maya, the

¹ All statutory references are to the Penal Code unless otherwise stated.

trial judge stated that Maya could not establish that he had lived “an honest and upright life” as required by section 1203.4a, subdivision (a) because he has been in continuous state or federal custody following his 2011 conviction. The court later denied Maya’s motion for reconsideration, noting that it was denying relief in the exercise of its discretion. Maya now appeals the denial of his expungement motion and motion for reconsideration.

FACTUAL AND PROCEDURAL HISTORY

On June 30, 2011, Maya pleaded guilty to driving under the influence with six prior driving-under-the-influence convictions, and possession of methamphetamine. (Veh. Code, §§ 23152, subd. (a), 23550; Health & Saf. Code, § 11377, subd. (a).) Maya also admitted that he had served two prior prison terms. (§ 667.5, subd. (b).) During the plea colloquy, the prosecutor advised Maya of the immigration consequences of his plea, including possible deportation.

On July 7, 2011, the trial court denied probation and sentenced Maya to four years eight months imprisonment, consisting of a three-year upper term for the driving-under-the-influence conviction, an eight-month consecutive term for the drug conviction, and a consecutive one-year term for one prior prison term allegation. The court struck the remaining prior prison term allegation and granted the prosecutor’s motion to dismiss the remaining charges and allegations. The court also imposed various fines and fees and awarded Maya 571 days of presentence custody credit.

On December 25, 2012, Maya completed his term of imprisonment. On that date and continuously since that time, the United States Department of Homeland Security received custody of Maya. The Department issued a removal notice

stating that Maya was subject to removal as a lawful permanent resident of the United States because he had suffered a conviction for possession of a controlled substance other than 30 grams or less of marijuana for personal use. (8 U.S.C. § 1227 (a)(2)(B)(i); *Padilla v. Kentucky* (2010) 559 U.S. 356, 368 [176 L.Ed.2d 284, 295] [Immigration and Nationality Act commands removal for all controlled substance convictions except the “most trivial of marijuana possession cases”].)²

In 2015, Maya filed an application to reduce his methamphetamine drug possession conviction to a misdemeanor, pursuant to section 1170.18, subdivisions (f) and (g) (“Proposition 47”). The court granted the application on October 1, 2015.

On April 11, 2018, Maya sought to have the now-misdemeanor drug possession conviction expunged pursuant to section 1203.4a. The appellate record does not contain Maya’s expungement motion or its supporting evidence. During argument of the motion, however, Maya’s counsel stated that Maya declared that he has attended Alcoholics Anonymous meetings while detained and has participated in fire camp.

Following the trial court’s denial of the motion, Maya filed a motion for reconsideration. The reconsideration motion contained a probation report dated April 6, 2018, stating: “There remains no demonstrated, or measurable level of compliance in the community [by Maya], and there has been no way to evaluate his ability to obey all laws.” The court denied the motion for reconsideration. In ruling, the trial judge decided that being “in custody for substantial periods of time” cannot be considered

² Expungement of a drug conviction may have no effect on the federal immigration consequences of the conviction. (*People v. Martinez* (2013) 57 Cal.4th 555, 560.)

leading an “honest and upright life” as required by statute: “Mr. Maya has never been released from custody [and there was] no opportunity . . . to determine whether he leads a law-abiding life when out of custody.”

DISCUSSION

Maya contends that the trial court erred by not considering his good behavior during federal custody as evidence of “an honest and upright life” within section 1203.4a, subdivision (a). He also asserts that the court erred by considering that he did not receive a grant of probation at sentencing and that he also was convicted of driving under the influence. Maya relies upon *People v. Khamvongsa* (2017) 8 Cal.App.5th 1239, 1244-1247 [completed prison sentence for offense reclassified as misdemeanor does not preclude relief pursuant to section 1203.4a]. He adds that section 1203.4a does not define “an honest and upright life.”

Section 1203.4a, subdivision (a) provides: “Every defendant convicted of a misdemeanor and not granted probation . . . shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty . . . and . . . the court shall thereupon dismiss the accusatory pleading against the defendant” The discretionary expungement provision of section 1203.4a, subdivision (b) states: “If a defendant does not satisfy all the requirements of subdivision (a),

after a lapse of one year from the date of pronouncement of judgment, a court, in its discretion and in the interests of justice, may grant the relief pursuant to subdivision (a) . . . if [defendant] has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense, and is not under charge of commission of any crime.” A defendant who later has his felony conviction reduced to a misdemeanor is eligible for relief pursuant to section 1203.4a. (*People v. Khamvongsa, supra*, 8 Cal.App.5th 1239, 1244-1245 [reclassified drug conviction is a misdemeanor for all purposes, including expungement relief pursuant to section 1203.4a].)

The trial court did not abuse its discretion by concluding that Maya has not established that he has led an honest and upright life during his state and federal custody. Compliance with prison regulations in an institutional setting does not satisfy the requirement of an honest and upright life. A custodial setting necessarily restricts an inmate’s exercise of free will; an honest and upright life demands more than mere compliance with prison regulations or participation in prison classes and activities. Prison confinement necessarily precludes evidence of inmate behavior in the face of outside temptation. (See *People v. Zeigler* (2012) 211 Cal.App.4th 638; *id.* at pp. 652, 654 [certificate of rehabilitation pursuant to section 4852.05 requires evidence that person lived “an honest and upright life,” a high standard to meet].)

Maya asserts that the language allowing a defendant to seek relief “at any time after the lapse of one year from the date of pronouncement of judgment” implies that a trial court considering an expungement motion may consider custodial behavior in assessing “an honest and upright life.” (§ 1203.4a,

subd. (a).) Reading the words of the statute in context, however, the reference to “one year” refers to the earliest time a defendant may seek expungement of his misdemeanor conviction. (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 301 [in construing a statute, words must be read in context].)

We disagree that the trial court’s comments regarding Maya’s lack of a grant of probation or his conviction for felony driving under the influence indicates that the court was confused regarding the requirements of section 1203.4a. A fair reading of the court’s statements in context indicates that it could not evaluate whether Maya had lived an honest and upright life since the pronouncement of judgment because he has been in custody continuously since 2011.

The trial judge stated: “There’s been no opportunity by the Court or probation or by parole officials to determine whether he leads a law-abiding life when out of custody and I think that’s what probation and parole and Post Release Supervision is all about.” The court also agreed with Maya that he was eligible for expungement although he had also suffered a felony conviction for driving under the influence. We presume that the court knows and understands the law and applies it correctly. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 913.) We also must review the court’s statements in context. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1158 [court’s comments in denying probation must be read in context].)

Maya’s reliance upon *People v. Galvan* (2007) 155 Cal.App.4th 978, 983-984, and *People v. Cervantes* (2009) 175 Cal.App.4th 291, 295-297, is misplaced. Those decisions conclude that a defendant’s failure to report to his probation officer or attend a court hearing is not willful when the defendant is

detained by immigration authorities. The decisions involve probationers and the violation of court orders and are not relevant here.

In response to the dissent, we are mindful that Maya is in custody because of his immigration status, and not because he committed a new crime. But he bears responsibility for that status. His being in a controlled custodial environment does not allow for proper evaluation of how Maya would conduct himself in society.

The order is affirmed.

CERTIFIED FOR PUBLICATION.

GILBERT, P. J.

I concur:

YEGAN, J.

TANGEMAN, J.:

I respectfully dissent. Penal Code¹ section 1203.4a, subdivision (a) mandates relief if certain conditions are satisfied. The majority concedes that Maya (1) was convicted of a felony which was later reduced to a misdemeanor² and not granted probation, (2) complied with and performed the sentence of the court, (3) is not serving a sentence for any offense, and (4) is not charged with a new crime. That leaves only one remaining condition: that he lived an honest and upright life and obeyed the laws of the land since the pronouncement of judgment.

It is settled that the conditions imposed by section 1203.4a, including living an honest and upright life, “must be read as relating to one year from the date of pronouncement of judgment.” (*People v. Chandlee* (1979) 90 Cal.App.3d Supp. 13, 20.) This is so because section 1203.4a evinces an “intention to secure law compliance from a misdemeanant not placed on probation, but instead sentenced outright (by fine or jail term) who stays out of trouble with the law for one year after his misdemeanor conviction.” (*Ibid.*)

The majority opinion concludes that “[c]ompliance with prison regulations in an institutional setting does not satisfy the requirement of an honest and upright life.” (Maj. opn. *ante*, at p. 5.) No authority is cited for this conclusion because none exists.

¹ All further statutory references are to the Penal Code.

² A defendant convicted of a felony and sentenced to prison who later has the felony conviction reduced to a misdemeanor is eligible for relief pursuant to section 1203.4a. (*People v. Khamvongsa* (2017) 8 Cal.App.5th 1239.)

The plain language of section 1203.4a compels the opposite result. The statute requires only that the misdemeanant comply with the law for one year following conviction (see *People v. Chandlee, supra*, 90 Cal.App.3d at p. Supp. 20). This includes time spent in custody, for the language plainly applies to misdemeanants denied probation and sentenced outright, commencing “from the date of pronouncement of judgment,” not the date of release from custody.³ A misdemeanant may be incarcerated for up to one year after conviction. (§ 19.2.)

Where the statutory language is clear, ““courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.”” (*Meza v. Portfolio Recovery Associates, LLC* (2019) 6 Cal.5th 844, 856.) Following the plain meaning of section 1203.4a would not lead to absurd results. It is no secret that persons in custody can, and often do, commit crimes or violate institutional rules. (See, e.g., §§ 243.1 [battery against custodial officer], 4573.6 [possession of controlled substance in jail].) It is not absurd to encourage their compliance with the law and institutional rules pending their release.

On the other hand, withholding relief from persons who conform their behavior to the law solely because they are being detained by immigration authorities is inconsistent with the recognized objective of encouraging them “to stay[] out of trouble with the law for one year after” their conviction.

³ Cf. *People v. Zeigler* (2012) 211 Cal.App.4th 638 [certificate of rehabilitation requires successful completion of sentence and an additional sustained period of rehabilitation “commenc[ing] upon the discharge of the petitioner from custody” (§ 4852.03, subd. (a))].

I would reverse and remand for an evidentiary hearing on whether Maya conformed his behavior to the laws of the land for one year following the pronouncement of judgment.

CERTIFIED FOR PUBLICATION.

TANGEMAN, J.

STATE OF CALIFORNIA
Supreme Court of California

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