

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**THE PEOPLE,**

Plaintiff and Respondent,

v.

**MAURICE WALKER,**

Defendant and Appellant.

No. S278309

Court of Appeal

No. B319961

Los Angeles

County Superior

Court No.

BA398731

APPELLANT'S OPENING BRIEF ON THE MERITS

Appeal from the Judgment of the Superior Court  
of the State of California for the County of Los Angeles

THE HONORABLE DAVID R. FIELDS, JUDGE

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	4
ISSUE PRESENTED.....	5
Does the amendment to Penal Code section 1385, subdivision (c) that requires trial courts to “afford great weight” to enumerated mitigating circumstances (Stats. 2021, ch. 721) create a rebuttable presumption in favor of dismissing an enhancement unless the trial court finds dismissal would endanger public safety? .....	5
INTRODUCTION .....	5
STATEMENT OF THE CASE .....	6
The Trial Court Initially Sentences Appellant to 20 Years ....	6
The Trial Court Strikes the One-Year Prison Prior Enhancement for Appellant’s 1992 Assault Conviction .....	6
The Trial Court Denies Appellant’s Petition for Writ of Habeas Corpus Challenging the One-Year Prison Prior Enhancement for His 2002 Drug Possession Conviction.....	6
The Trial Court Resentences Appellant to 16 Years .....	7
The Court of Appeal Affirms the Judgment.....	7
STATEMENT OF FACTS .....	8
ARGUMENT .....	8
THE AMENDMENT TO SECTION 1385, SUBDIVISION (C) THAT REQUIRES TRIAL COURTS TO “AFFORD GREAT WEIGHT” TO ENUMERATED MITIGATING CIRCUMSTANCES DOES NOT CREATE A REBUTTABLE PRESUMPTION IN FAVOR OF DISMISSING AN ENHANCEMENT.....	8
A. Senate Bill No. 81.....	8
B. The Rules of Statutory Construction .....	9
C. The Legislature Did Not Intend to Create a Rebuttable Presumption When It Amended Section 1385, Subdivision (c)... ..	10

CONCLUSION.....	13
CERTIFICATION OF WORD COUNT .....	14
PROOF OF SERVICE .....	15

## TABLE OF AUTHORITIES

### Cases

<i>California Teachers Assn. v. San Diego Community College Dist.</i> (1981) 28 Cal.3d 682 .....	12
<i>People v. Jones</i> (1993) 5 Cal.4th 1142.....	6
<i>People v. King</i> (2006) 38 Cal.4th 617 .....	9, 10, 11
<i>People v. Ortiz</i> (2023) 87 Cal.App.5th 1087, review granted April 12, 2023, S278894 .....	11, 12
<i>People v. Raybon</i> (2021) 11 Cal.5th 1056 .....	13
<i>People v. Sek</i> (2022) 74 Cal.App.5th 657 .....	8
<i>People v. Walker</i> (2021) 67 Cal.App.5th 198 .....	7
<i>People v. Walker</i> (2022) 86 Cal.App.5th 386 .....	5, 7, 11, 12, 13
<i>Smith v. Loanme, Inc.</i> (2021) 11 Cal.5th 183.....	10

### California Statutes

#### Penal Code

section 1385.....	<i>passim</i>
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### Other Authorities

Assembly Amendment to Senate Bill No. 81 (2021-2022 Reg. Sess.) August 30, 2021.....	11
Proposition 47 .....	7
Senate Amendment to Senate Bill No. 81 (2021-2022 Reg. Sess.) March 23, 2021 .....	11
Senate Bill No. 81 .....	5, 8, 11
Senate Daily Journal, Sept. 10, 2021 .....	12
Senate Rules Committee, Office of Senate Floor Analyses, analysis of Senate Bill No. 81 (2021-2022 Reg. Sess.) as amended August 30, 2021, September 8, 2021 .....	11, 12
Stats. 2021, ch. 721.....	5

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**APPELLANT’S OPENING BRIEF ON THE MERITS**  
**ISSUE PRESENTED**

When this court granted review, it limited the issue to be briefed and argued to the following:

Does the amendment to Penal Code section 1385, subdivision (c) that requires trial courts to “afford great weight” to enumerated mitigating circumstances (Stats. 2021, ch. 721) create a rebuttable presumption in favor of dismissing an enhancement unless the trial court finds dismissal would endanger public safety?

**INTRODUCTION**

The Court of Appeal held that Penal Code<sup>1</sup> “section 1385’s mandate to ‘afford great weight’ to mitigating circumstances erects a rebuttable presumption that obligates a court to dismiss the enhancement unless the court finds that dismissal of that enhancement ... would endanger public safety.” (*People v. Walker* (2022) 86 Cal.App.5th 386, 391.) The Court of Appeal’s holding cannot be reconciled with Senate Bill No. 81’s legislative history. This court should reverse the Court of Appeal’s judgment.

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<sup>1</sup> All unspecified statutory references are to the Penal Code.

## STATEMENT OF THE CASE

### **The Trial Court Initially Sentences Appellant to 20 Years.**

On November 16, 2012, the trial court struck appellant's juvenile strike and sentenced him to 20 years in prison: the high term of four years for assault with a deadly weapon (§ 245, subd. (a)(1)), which it doubled to eight years for his remaining strike—a 1992 assault conviction in YA008393; five years for inflicting great bodily injury on a person 70 or older (§ 12022.7, subd. (c)); five years for his prior serious felony (§ 667, subd. (a)(1))—the 1992 assault conviction; and one year for each of two prison priors (§ 667.5, subd. (b))—one for the 1992 assault conviction and one for a 2002 drug possession conviction in BA217734. (CT 20-21, 29-31; RT 5-6.) It imposed a 13-year sentence for elder abuse (§ 368, subd. (b)(1)), which it stayed pursuant to section 654, and a six-month concurrent sentence for misdemeanor battery (§ 242). (CT 18, 31-32; RT 5.)

### **The Trial Court Strikes the One-Year Prison Prior Enhancement for Appellant's 1992 Assault Conviction.**

On January 18, 2017, the trial court struck the one-year prison prior enhancement it had imposed for the 1992 assault conviction; this reduced appellant's total sentence to 19 years. (CT 31.) The trial court had improperly imposed both five-year and one-year enhancements for the 1992 assault conviction. (*People v. Jones* (1993) 5 Cal.4th 1142, 1152-1153.)

### **The Trial Court Denies Appellant's Petition for Writ of Habeas Corpus Challenging the One-Year Prison Prior Enhancement for His 2002 Drug Possession Conviction.**

In December of 2018, in a petition for writ of habeas corpus, appellant challenged the one-year prison prior enhancement for

the 2002 drug possession conviction, which was no longer a felony.<sup>2</sup> (CT 52-53.) The trial court denied the petition. (CT 53.)

Appellant appealed, and the Court of Appeal reversed the judgment in a published decision. (CT 53, 61; *People v. Walker* (2021) 67 Cal.App.5th 198.) It remanded appellant's case to the trial court with orders to strike the one-year prison prior enhancement and to conduct a full resentencing. (CT 61.)

### **The Trial Court Resentences Appellant to 16 Years.**

On April 8, 2022, the trial court resentenced appellant to 16 years in prison. (CT 96; RT 1520.) Instead of the four-year high term, it imposed the three-year middle term for assault with a deadly weapon, which it doubled to six years for his prior strike. (CT 96-97, 101; RT 1519-1520.) It also struck the one-year prison prior enhancement for the 2002 drug possession conviction. (RT 1522.) It did not strike either of the two five-year enhancements. (CT 97-98; RT 1520.)

### **The Court of Appeal Affirms the Judgment.**

On April 11, 2022, appellant filed a timely notice of appeal. (CT 100.) The Court of Appeal affirmed the relevant part of the judgment in a published decision. (*People v. Walker, supra*, 86 Cal.App.5th 386.)

On March 22, 2023, this court granted appellant's petition for review.

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<sup>2</sup> In May of 2015, pursuant to Proposition 47, the trial court had redesignated appellant's 2002 felony drug possession conviction a misdemeanor. (CT 51.)

## STATEMENT OF FACTS

The following statement of facts is drawn from the pre-conviction probation report and the trial court's comments on the facts at appellant's sentencing and resentencing.

Tina Johnson was leaving her apartment when appellant blocked her path. (CT 3.) He yelled at her and asked her where she was going. (CT 3.) They began to argue, and appellant struck her on the lower lip with his elbow. (CT 3.)

Ms. Johnson walked away to call the police. (CT 3.) Sylvester Williams, who was 77 or 78 years old and used a wheelchair, approached appellant after he witnessed the altercation with Ms. Johnson. (CT 4; RT 6, 1518.) Appellant stabbed Mr. Williams in the arm with a small knife. (CT 3.)

Mr. Williams was treated at USC Medical Center. (CT 4.) Ms. Johnson did not sustain any visible injury. (CT 5.) She complained of pain to her lower lip, but she refused medical treatment. (CT 5.)

## ARGUMENT

### **THE AMENDMENT TO SECTION 1385, SUBDIVISION (C) THAT REQUIRES TRIAL COURTS TO "AFFORD GREAT WEIGHT" TO ENUMERATED MITIGATING CIRCUMSTANCES DOES NOT CREATE A REBUTTABLE PRESUMPTION IN FAVOR OF DISMISSING AN ENHANCEMENT.**

#### **A. Senate Bill No. 81.**

Senate Bill No. 81 (SB 81), which amended section 1385, became effective on January 1, 2022. (*People v. Sek* (2022) 74 Cal.App.5th 657, 674.) Subdivisions (c)(1) and (c)(2) of section 1385 now state:



(c)(1) Notwithstanding any other law, the court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute.

(2) In exercising its discretion under this subdivision, the court shall consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances in subparagraphs (A) to (I) are present. Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. “Endanger public safety” means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.

The mitigating circumstances that were relevant to appellant’s resentencing appear in subparagraphs (B) and (H) of section 1385, subdivision (c)(2):

(B) Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement shall be dismissed.

(H) The enhancement is based on a prior conviction that is over five years old.

### **B. The Rules of Statutory Construction.**

“The basic rules of statutory construction are well established.” (*People v. King* (2006) 38 Cal.4th 617, 622.)

“When construing a statute, a court seeks to determine and give effect to the intent of the enacting legislative body.” [Citation.] “We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [Citation.] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context.’ [Citation.] If the plain, commonsense meaning of a statute’s words is unambiguous, the plain meaning controls.” [Citation.] But if the statutory language may reasonably be given more than one interpretation, ““courts may consider various extrinsic

aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.”” [Citations.]

(*Ibid.*) “The interpretation of a statute presents a question of law that this court reviews de novo. [Citations.]” (*Smith v. Loanme, Inc.* (2021) 11 Cal.5th 183, 190.)

**C. The Legislature Did Not Intend to Create a Rebuttable Presumption When It Amended Section 1385, Subdivision (c).**

The Court of Appeal wrote:

[W]hat does it mean to “greatly weigh” a mitigating circumstance in deciding whether to dismiss an enhancement? We conclude that section 1385’s mandate to “afford great weight” to mitigating circumstances erects a rebuttable presumption that obligates a court to dismiss the enhancement unless the court finds that dismissal of that enhancement—with the resultingly shorter sentence—would endanger public safety.

(*People v. Walker, supra*, 86 Cal.App.5th 386, 391.)

Other courts have declined to follow the Court of Appeal’s holding. (E.g., *People v. Ortiz* (2023) 87 Cal.App.5th 1087, 1097-1098, review granted Apr. 12, 2023, S278894.) The *Ortiz* court explained:

In our view, the ultimate question before the trial court remains whether it is in the furtherance of justice to dismiss an enhancement. To be sure, the Legislature has invested the enumerated mitigating circumstances with great weight .... But this does not preclude a trial court from determining that countervailing factors—other than the likelihood of physical or other serious danger to others—may nonetheless neutralize even the great weight of the mitigating circumstance, such that dismissal of the enhancement is not in furtherance of justice.

(*Id.* at p. 1098.)

The “plain, commonsense meaning” of section 1385, subdivision (c) is ambiguous. (*People v. King, supra*, 38 Cal.4th 617, 622.) The statute discusses a court’s exercise of discretion, but it also identifies circumstances under which an enhancement “shall be dismissed.” (§ 1385, subds. (c)(1), (c)(2), (c)(2)(B), (c)(2)(C).) As the split between *Walker* and *Ortiz* demonstrate, “the statutory language may reasonably be given more than one interpretation ...” (*People v. King, supra*, 38 Cal.4th 617, 622.) Resort to the legislative history is appropriate. (*Ibid.*)

On March 23, 2021, the Senate amended SB 81 so section 1385, subdivision (c)(2) would include a rebuttable presumption:

There shall be a presumption that it is in the furtherance of justice to dismiss an enhancement upon a finding that any of the circumstances in subparagraphs (A) to (I) inclusive are true. This presumption shall only be overcome by a showing of clear and convincing evidence that dismissal of the enhancement would endanger public safety.

(Sen. Amend. to Sen. Bill No. 81 (2021-2022 Reg. Sess.) Mar. 23, 2021.)

On August 30, 2021, the Assembly amended SB 81 by replacing the rebuttable presumption in section 1385, subdivision (c)(2) with the “shall consider and afford great weight” language found in the statute’s final version. (Assem. Amend. to Sen. Bill No. 81 (2021-2022 Reg. Sess.) Aug. 30, 2021.) This amendment:

Remove[d] the presumption that it is in the interests of justice to dismiss an enhancement when specified circumstances are found to be true and instead provide[d] that the court shall, in exercising its discretion to dismiss an enhancement in the interests of justice, consider and afford great weight to evidence of those specified circumstances.

(Sen. Rules Comm., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 81 (2021-2022 Reg. Sess.) as amended Aug. 30, 2021, Sept. 8, 2021, at p. 2.)

In a letter printed in the September 10, 2021, Senate Daily Journal, Senator Nancy Skinner, the Senate author of SB 81, explained:

[A]mendments taken on August 30, 2021 remove the presumption that a judge must rule to dismiss a sentence enhancement if certain circumstances are present, and instead replaces that presumption with a “great weight” standard where the circumstances are present. The retention of the word “shall” in Penal Code §1385(c)(3)(B) and (C) should not be read as a retention of the previous presumption language—the judge’s discretion in preserved in Penal Code §1385(c)(2).

(Sen. Daily Journal, Sept. 10, 2021, pp. 2638-2639; see *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 682, 700 [statement of an individual legislator entitled to consideration when it gives “some indication of arguments made to the Legislature and [it] was printed upon motion of the Legislature as a ‘letter of legislative intent’”].)

SB 81’s legislative history demonstrates that the Legislature did not intend to create a rebuttable presumption. As the *Ortiz* court observed, “Had the Legislature intended to establish a rebuttable presumption ..., it could have approved the language of the earlier version of the bill. We are unable to ignore the fact that it did not.” (*People v. Ortiz, supra*, 87 Cal.App.5th 1087, 1097.) The Court of Appeal erred when it held:

[S]ection 1385’s mandate to “afford great weight” to mitigating circumstances erects a rebuttable presumption that obligates a court to dismiss the enhancement unless the

court finds that dismissal of that enhancement—with the resultingly shorter sentence—would endanger public safety.

*(People v. Walker, supra, 86 Cal.App.5th 386, 391.)*

### **CONCLUSION**

For the reasons stated above, appellant respectfully requests that this court reverse the judgment of the Court of Appeal and remand this matter to the Court of Appeal for further proceedings consistent with this court's opinion. (See *People v. Raybon* (2021) 11 Cal.5th 1056, 1086.)

CERTIFICATION OF WORD COUNT

**(Cal. Rules of Court, rule 8.520(c))**

I, appellate counsel of record for appellant Maurice Walker in this matter, certify that according to Microsoft Word, the word processing program used to prepare this brief, the word count of this brief is 2,074 words.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.  
Executed at San Francisco, California on June 16, 2023.

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Jason Szydlik  
Attorney for appellant Maurice Walker

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to this appeal. My business address is 5758 Geary Blvd., #246; San Francisco, California 94121. I served the attached **OPENING BRIEF ON THE MERITS** on the date shown below by enclosing it in envelopes addressed to the following persons and depositing the sealed envelopes with the United States Postal Service in San Francisco, California with the postage fully prepaid.

Clerk of Court  
Superior Court of California, County of Los Angeles  
210 West Temple Street  
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Los Angeles County District Attorney  
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Maurice Walker

I electronically served the attached **OPENING BRIEF ON THE MERITS** to the following parties on the date below via truefiling.com.

California Court of Appeal  
Second Appellate District  
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300 South Spring Street  
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I electronically served the attached **OPENING BRIEF ON THE MERITS** to the following parties on the date below via email at capdocs@lacap.com.

California Appellate Project Los Angeles  
520 S. Grand Ave., 4<sup>th</sup> Floor  
Los Angeles, CA 90071

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on June 16, 2023.

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Jason Szydlak

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

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Case Number: **S278309**  
Lower Court Case Number: **B319961**

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Last Name, First Name (PNum)

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