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No. S278309

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
MAURICE WALKER,
Defendant and Appellant.

Second Appellate District Division Two, Case No. B319961
Los Angeles County Superior Court, Case No. BA398731
The Honorable David R. Fields, Judge

ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

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

Effective January 1, 2022, Senate Bill No. 81 amended Penal Code section 1385, subdivision (c) by requiring courts to consider and "afford great weight" to nine mitigating factors when determining if dismissal of a sentencing enhancement is in the furtherance of justice.[1] As shown by the plain language of the statute and the legislative history of Senate Bill No. 81, the amendment did not create a rebuttable presumption in favor of dismissing an enhancement. Rather, the "great weight" language is properly understood as providing guidance for the court's exercise of its sentencing discretion.

LEGAL BACKGROUND

Under section 1385, a trial court has broad discretion to dismiss a charge or allegation "in furtherance of justice." (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530-531.) But this standard is an "amorphous concept." (*People v. Williams*

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

(1998) 17 Cal.4th 148, 159.) For instance, in considering whether to exercise discretion under section 1385 to dismiss a prior conviction found true under the Three Strikes law, the sentencing court must accord "preponderant weight" to "factors intrinsic to the scheme, such as the nature and circumstances of the defendant's present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects." (*Id*. at p. 161.)

In 2021, the Legislature introduced Senate Bill No. 81 "to provide guidance to courts by specifying circumstances for a court to consider when determining whether to apply an enhancement." (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 81 (2021-2022 Reg. Sess.) Mar. 16, 2021, pp. 1, 4-6.)[2] Early versions of Senate Bill No. 81 provided that "[t]here shall be a presumption that it is in the furtherance of justice to dismiss an enhancement" upon a finding that any of the enumerated mitigating circumstances are true, and that "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.) Apr. 27, 2021; *People v. Lipscomb* (2022) 87 Cal.App.5th 9, 19.) On August 30, 2021, the Assembly removed this language

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[2] All bill analyses for Senate Bill No. 81 are available at <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB81>.

regarding a rebuttable presumption, replacing it with the language that now appears in section 1385, subdivision (c)(2). (Assem. Amend. to Sen. Bill. No. 81 (2021-2022 Reg. Sess.) Aug. 30, 2021; *Lipscomb*, *supra*, 87 Cal.App.5th at p. 19.)

Senate Bill No. 81 became effective on January 1, 2022. (Stats. 2021, ch. 721, § 1.) The enacted version of section 1385 provides in relevant part:

> (a) The judge or magistrate may, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. . . . [¶] . . . [¶]
>
> (c)(1) Notwithstanding any other law, the court shall dismiss an enhancement if it is in the furtherance of justice to do so . . . .
>
> (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.
>
> (A) Application of the enhancement would result in a discriminatory racial impact as described in paragraph (4) of subdivision (a) of Section 745;
>
> (B) Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement shall be dismissed;

(C) The application of an enhancement could result in a sentence of over 20 years. In this instance, the enhancement shall be dismissed;

(D) The current offense is connected to mental illness;

(E) The current offense is connected to prior victimization or childhood trauma;

(F) The current offense is not a violent felony as defined in subdivision (c) of Section 667.5;

(G) The defendant was a juvenile when they committed the current offense or any prior offenses, including criminal convictions and juvenile adjudications, that trigger the enhancement or enhancements applied in the current case;

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

(I) Though a firearm was used in the current offense, it was inoperable or unloaded.

(3) While the court may exercise its discretion at sentencing, this subdivision does not prevent a court from exercising its discretion before, during, or after trial or entry of plea.

(4) The circumstances listed in paragraph (2) are not exclusive and the court maintains authority to dismiss or strike an enhancement in accordance with subdivision (a).

STATEMENT OF THE CASE

A. Walker's assault conviction and resentencing

In 2012, appellant Maurice Walker elbowed Tina Johnson in the mouth, which loosened one of her teeth. (CT 3-5, 78; RT 6, 1518.) When Sylvester Williams—a 77-year-old man confined to

a wheelchair—tried to intervene, Walker repeatedly stabbed him in the arm with a knife. (CT 3-5, 78; RT 6, 1518.)

A jury convicted Walker of assault with a deadly weapon (§ 245, subd. (a)(1); count 1), battery (§ 242; count 2), and elder abuse (§ 368, subd. (b)(1); count 3). (CT 24, 30-31, 49-50, 78.) The jury also found true as to counts 1 and 3 that Walker personally inflicted great bodily injury on an elderly victim (§ 12022.7, subds. (a) & (c)), and as to count 3 that Walker personally used a deadly weapon (§ 12022, subd. (b)(1)). (CT 25, 30-31, 49-50, 78.) Walker admitted that he had suffered two prior strike convictions under the Three Strikes law (§ 667, subds. (b)-(i)) and a prior serious felony conviction (§ 667, subd. (a)), and that he had served two prior prison terms for a 1992 assault conviction and a 2002 drug conviction (§ 667.5, subd. (a)). (CT 50-51.)[3] The trial court sentenced Walker to 20 years in prison. (CT 36, 38-39, 50; RT 5-6.) The Court of Appeal affirmed the conviction and sentence. (CT 50; *People v. Walker* (Feb. 24, 2014, No. B245405) [nonpub. opn.].)

Walker successfully petitioned to have his 2002 felony drug conviction reduced to a misdemeanor. (CT 26-27, 51, 78-79.) The

[3] The two strikes were a 1983 juvenile robbery adjudication and a 1992 conviction for assault with a deadly weapon. (CT 35, 50; RT 1.) At the original sentencing hearing in 2012, the court struck the juvenile robbery strike, and the resentencing court in 2022 similarly did not sentence Walker on the basis of that prior adjudication. (RT 2-3, 1519.)

superior court subsequently held a resentencing hearing, where it struck the one-year prior prison term enhancement arising from the 1992 assault conviction (because the same conviction was used to impose a five-year prior serious felony conviction enhancement). (CT 31, 51-53.) But the court failed to strike the prior prison term enhancement for the drug conviction even though it had been reduced to a misdemeanor. (CT 31, 51-53.) Walker appealed this error and the Court of Appeal remanded with directions to dismiss the remaining prior prison term enhancement and conduct a full resentencing. (*People v. Walker* (2021) 67 Cal.App.5th 198, 208; see also CT 46, 48-61.)

The trial court held a resentencing hearing in April 2022. (CT 94-99; RT 1201-1202, 1501.) The court noted that section 1385, subsection (c), as amended by Senate Bill No. 81, stated that, "all enhancements beyond a single enhancement shall be dismissed," "unless the court finds a dismissal of these enhancements would endanger public safety." (RT 1503.) The prosecutor argued Walker was dangerous and that dismissing the enhancements was not in the interest of justice in light of: (1) Walker's continuous criminal history from 1983 to 2012; (2) Walker's Youth Authority placement for assault; and (3) the violent facts of both the instant offense and prior assault in 1992. (RT 1505-1508, 1510-1511, 1517.)[4] Walker argued that he was

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[4] In 1992, a jury convicted Walker of assault with a deadly weapon after he smashed a glass in his ex-girlfriend's face,

(continued…)

not a danger to the public because his criminal history did not demonstrate any violence between 1991 and 2012. (RT 1509.) The record, however, showed that Walker's parole was revoked after his 2009 arrest for criminal threats, and that he was again arrested for criminal threats in 2011. (RT 1509; see also CCT 7.)

The trial court declined to dismiss Walker's enhancements under section 1385. (RT 1518.) The court noted that there were multiple enhancements, which is one of the enumerated mitigating factors under section 1385. (RT 1518.) However, the court explained that, in light of the violent assault underlying his conviction and his prior assault conviction, it was "in the interest of justice that the enhancements should remain." (RT 1518.) The

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(…continued)

breaking her nose and causing lacerations necessitating 100 stitches. (See Confidential CT ("CCT") 6-7; CT 20; RT 1505-1506, 1518.) Walker's criminal history also included convictions for robbery (§ 211) and cultivating cannabis (Health & Saf. Code, § 11358) in 1983; being under the influence of a controlled substance (Health & Saf. Code, § 11550) in 1994; burglary (§ 459) and defrauding an innkeeper (§ 537) in 1995; possession of methamphetamine with the intent to sell (Health & Saf. Code, §§ 11378, 11377, subd. (a)) in 1997; possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) in 2002; and possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and possession of drug paraphernalia (Health & Saf. Code, § 11364, subd. (a)) in 2007. (See CCT 6-7; CT 20, 50, 78-79; RT 1517.) Regarding the instant offenses, victim Williams died in 2016 and the prosecutor was not able to contact victim Johnson to obtain her testimony for the resentencing hearing. (RT 1504.)

court ultimately imposed a 16-year sentence, consisting of a three-year midterm for count 1, doubled to six years pursuant to the Three Strikes law, plus five years for inflicting great bodily injury on an elder and an additional five years for the prior serious felony conviction. (CT 96-99, 101-102; RT 1519-1521, 1523.)

B. The Court of Appeal held that section 1385 creates a rebuttable presumption in favor of dismissing an enhancement

On appeal, Walker claimed that the trial court erred in declining to strike the prior serious felony conviction enhancement under section 1385. (Opinion 6.) Interpreting section 1385, as amended by Senate Bill No. 81, the Court of Appeal held 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." (Opn. 13; see also *ibid*. ["Collectively, these provisions dictate that trial courts are obligated to rebuttably presume that dismissal of an enhancement is in the furtherance of justice (and that its dismissal is required) *unless* the court makes a finding that the resultingly shorter sentence due to dismissal 'would endanger public safety'"].)

The Court of Appeal rejected Walker's claim that the term "great weight" must be construed as in *People v. Martin* (1986) 42 Cal.3d 437. (Opn. 14.) *Martin* interpreted "great weight" to mean that a superior court was obligated to accept certain

findings by an administrative body "unless there [was] substantial evidence of countervailing considerations." (Opn. 14, citing *Martin*, *supra*, 42 Cal.3d at pp. 441-445, 448.) The Court of Appeal, however, found *Martin* inapplicable. (Opn. 14-15.) The Court of Appeal first explained that the term "great weight" in *Martin* arose in a very different context, which was inapt to the discretionary balancing process required under section 1385. (Opn. 14.) In particular, the Court of Appeal reasoned that *Martin* was based on two considerations that were wholly absent under section 1385—the need to defer to a concordant body in another branch of government (in *Martin*, the Board of Prison Terms), and the desire to avoid having one judge overrule another absent a finding of disparity by an independent body. (Opn. 14-15.) Additionally, the Court of Appeal found that a post-enactment letter by Senate Bill No. 81's author—which encouraged applying *Martin*'s construction of "great weight" to section 1385—was entitled to little if any weight, as it reflected a single legislator's views, rather than the legislative body's intent. (Opn. 15-16.) Accordingly, the Court of Appeal found that *Martin*'s "especially onerous" construction of "great weight" did not apply to section 1385. (Opn. 14-16.)

ARGUMENT

THE TERM "GREAT WEIGHT" IN SECTION 1385, SUBDIVISION (C) DOES NOT CREATE A REBUTTABLE PRESUMPTION IN FAVOR OF DISMISSING AN ENHANCEMENT

Senate Bill No. 81 amended section 1385 by enumerating mitigating circumstances that the trial court must consider and "afford great weight" when deciding whether to strike

enhancements from a defendant's sentence in the furtherance of justice. (Stats. 2021, ch. 721; § 1385, subd. (c)(2).) In this case, the Court of Appeal concluded that the use of the term "great weight" in section 1385 created a presumption in favor of dismissal that is rebuttable only by a finding that dismissal would endanger public safety. (Opn. 13.) This conclusion was incorrect because both the plain language of section 1385 and the legislative history of Senate Bill No. 81 demonstrate that the Legislature did not intend to create a rebuttable presumption.

A. Principles of statutory construction

The proper interpretation of a statute is a question of law that is reviewed de novo. (*People v. Lewis* (2021) 11 Cal.5th 952, 961.) The court's fundamental task is "to determine the Legislature's intent so as to effectuate the law's purpose." (*Ibid.*, internal quotation marks omitted.) A court interpreting a statute begins by "examining the statute's words, giving them a plain and commonsense meaning." (*Ibid.*, internal quotation marks omitted.) "The language is construed in the context of the statute as a whole and the overall statutory scheme, and [the court] give[s] 'significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.'" (*People v. Canty* (2004) 32 Cal.4th 1266, 1276, internal citations omitted.) A court must decline to read language into a statute that is not there. (Code Civ. Proc., § 1858; *People v. Guzman* (2005) 35 Cal.4th 577, 587 ["'insert[ing]' additional language into a statute 'violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes'"].) Generally, courts will "consult extrinsic

sources, like a statute's history, to interpret a statute only when its language is ambiguous." (*People v. Tran* (2022) 13 Cal.5th 1169, 1220; see also *In re H.W.* (2019) 6 Cal.5th 1068, 1073 ["If the relevant statutory language is ambiguous, [the court] may glean further insight from appropriate extrinsic sources, including the legislative history."].)

B. The plain language of section 1385 does not create a presumption in favor of dismissing enhancements

By using the words "great weight" in subdivision (c), the Legislature maintained the trial court's longstanding discretionary balancing function under section 1385. The plain language used by the Legislature is readily understood as guiding courts to give the listed factors greater emphasis or importance in the balance, without creating a presumption.

"The dictionary is a proper source to determine the usual and ordinary meaning of words in a statute." (*Lincoln Unified School Dist. v. Superior Court* (2020) 45 Cal.App.5th 1079, 1092, fn. 4.) "[T]he relevant dictionary definitions are the ones in place when the statute was adopted." (*California Public Records Research, Inc. v. County of Yolo* (2016) 4 Cal.App.5th 150, 168.)

In plain language, "weight" has two relevant meanings. As a noun, the American Heritage Dictionary defines weight as "[i]nfluence, importance, or authority: *Her approval carried great weight*." (American Heritage Dict. (5th ed. 2018) p. 1964, col. 2; see also Webster's New World Dict. (5th college ed. 2020) p. 1641, col. 2 [defining weight as "importance or consequence [*a matter of great weight*]"].) As a transitive verb, the American Heritage

Dictionary defines weight as "[t]o cause to have a slant or bias: *weighted the rules in favor of homeowners*." (American Heritage Dict. (5th ed. 2018) p. 1964, col. 2; see also Webster's New World Dict. (5th college ed. 2020) p. 1641, col. 2 [defining weight as "to manage, control, or influence in a particular direction or so as to favor a particular side; slant [*the evidence was weighted against the defendant*]."].)

Similarly, the word "great" can have different meanings when used as an adjective or adverb. As an adjective, great means "[o]f outstanding significance or importance: *a great work of art,*" and as an adverb, it is "[u]sed as an intensive . . . : *a great big kiss*." (American Heritage Dict. (5th ed. 2018) p. 769, col. 2.)

The first sentence in section 1385, subdivision (c)(2) states that "[i]n 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." (§ 1385, subd. (c)(2).) This sentence—using great as an adjective and weight as a noun—means that the trial court must evaluate and give significant influence or probative value to the evidence offered by the defendant to establish the enumerated mitigating factors. (*People v. Ortiz* (2023) 87 Cal.App.5th 1087, 1096, rev. granted Apr. 12, 2023, S278894 [section 1385 directs courts to holistically balance any relevant factors "with special emphasis on the enumerated mitigating factors"]; cf. *People v. Turner* (2020) 10 Cal.5th 786, 805 ["'Weight' describes the degree to which the jury finds the evidence probative"].)

The second sentence in subdivision (c)(2) states that "[p]roof 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." (§ 1385, subd. (c)(2).) This sentence—using great as an adverb and weight as a transitive verb—means that once an enumerated mitigating factor has been established, the established factor significantly supports (but does not require) the dismissal of the enhancement absent a finding of danger to public safety.

Contrary to the Court of Appeal's conclusion, this statutory language does not create a rebuttable presumption that requires a court to dismiss the enhancement unless the court finds the dismissal would endanger public safety. "A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action." (Evid. Code, § 600.) "Put differently, presumptions are conclusions that the law *requires* to be drawn (in the absence of a sufficient contrary showing) when some other fact is proved or otherwise established in the action." (*People v. McCall* (2004) 32 Cal.4th 175, 182, italics added, internal quotations omitted.)

Under section 1385, if an enumerated mitigating circumstance is proven, a court is not *required* to assume that dismissal of an enhancement is in the furtherance of justice. "The plain language of section 1385[, subdivision] (c)(2) contemplates the trial court's exercise of sentencing discretion, even as it mandates that the court give 'great weight' to evidence

of enumerated factors." (*Ortiz, supra*, 87 Cal.App.5th at p. 109; cf. *In re Stephanie M.* (1994) 7 Cal.4th 295, 320 [holding that statute's "preferential consideration" for placing a child with a relative did not operate as an evidentiary presumption in favor of relative placement; the court was ultimately tasked to consider a non-exhaustive list of factors to determine the best interest of the child].)

Indeed, presumptions are used in the context of evidentiary factfinding (Evid. Code, § 600), not holistic balancing and discretionary decision-making.[5] Interpreting section 1385 as containing a presumption of dismissal is inconsistent with the statute's repeated mandate that courts are to exercise their

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[5] This distinction is exemplified by the role of the Sixth Amendment in the sentencing context. In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court found that because California's Determinate Sentencing Law established a presumptive midterm, a trial court's selection of the upper term required evidentiary factfinding by the sentencing judge, which violated the Sixth Amendment jury trial requirement for findings of fact increasing punishment. (*Id.* at pp. 292-294.) By contrast, a nonpresumptive approach granting the court the discretion to weigh factors in reaching a sentencing decision does not violate the Sixth Amendment. (*Id.* at p. 294 [noting that California has the option of complying with Sixth Amendment requirements by allowing sentencing courts "'to exercise broad discretion . . . within a statutory range'"]; see also *People v. Sandoval* (2007) 41 Cal.4th 825, 843-844 [eliminating the midterm presumption changes the court's role from factfinding to discretionary sentencing based on balancing of factors].)

discretion. (See § 1385, subd. (c)(2) ["*In exercising its discretion* under this subdivision, the court shall consider and afford great weight to evidence offered by the defendant"]; subd. (c)(3) ["While the court *may exercise its discretion* at sentencing, this subdivision does not prevent a court from exercising its discretion before, during, or after trial or entry of plea"]; subd (c)(4) ["The circumstances listed in [subdivision (c)(2)(A)-(I)] are not exclusive and the court maintains authority to dismiss or strike an enhancement in accordance with subdivision (a)," i.e., if it is "in furtherance of justice"], italics added.)

Despite the plain statutory language, the Court of Appeal reasoned that the collective use of the "shall/unless" dichotomy and the term "great weight" in section 1385, subdivisions (c)(1) and (c)(2) "dictate[s] that trial courts are to rebuttably presume that dismissal of an enhancement is in the furtherance of justice (and that dismissal is required) unless the court makes a finding that the resultingly shorter sentence due to dismissal 'would endanger public safety.'" (Opn. 13.) This construction of the statutory language is incorrect.

First, the use of the term "shall" in subdivision (c)(1) of section 1385—"the court *shall* dismiss an enhancement *if* it is in the furtherance of justice to do so"—gives the trial court general discretion to dismiss sentencing enhancements and "the dismissal of the enhancement is conditioned on a court's finding dismissal is in the interest of justice." (*People v. Anderson* (2023) 88 Cal.App.5th 233, 239, rev. granted Apr. 19, 2023, S278786.) In addition, as previously noted, the plain meaning of the term

"great weight" in subdivision (c)(2) provides that a trial court must give significant influence or probative value to the evidence offered by the defendant to establish any of the enumerated mitigating factors, and that an enumerated mitigating circumstance established by the evidence significantly supports—but does not necessarily require—the dismissal of the enhancement absent a finding of danger to public safety. Accordingly, the collective use of the terms "shall" and "great weight" in section 1385 does not support the Court of Appeal's interpretation that subdivision (c) creates a rebuttal presumption.

Second, the Court of Appeal failed to consider the overall context of the statute when interpreting "shall" in section 1385. (See opn. 13.) As this Court observed in *People v. Ledesma* (1997) 16 Cal.4th 90, 95, "unlike some codes that expressly define 'shall' as mandatory and 'may' as permissive [citations], the Penal Code provides only that '[w]ords and phrases must be construed according to the context and the approved usage of the language . . . .' (§ 7, subd. 16.)" The Court elaborated on this point in *Tarrant Bell Property, LLC v. Superior Court* (2011) 51 Cal.4th 538: "[A]s we have explained, in determining whether the Legislature intended a statute to be mandatory or permissive, use in the statute of 'may' or 'shall' is merely indicative, *not dispositive or conclusive*. [Citation.] Therefore, we may properly consider other indicia of legislative intent, including relevant legislative history. [Citations.]" (*Id*. at p. 542, italics added.)

Here, the Court of Appeal found that the collective use of the "shall/unless" dichotomy and the term "great weight" in section 1385 was dispositive. In so doing, it strayed from the plain language of the statute, as discussed above, and it failed to give the proper import to the term "shall" as shown by context.

C. The legislative history of Senate Bill No. 81 confirms that section 1385 does not establish a rebuttable presumption in favor of dismissal

To the extent the plain language of the statute, by itself, is inconclusive, the Court looks to legislative history and other indicia of legislative intent. (*Tran*, *supra*, 13 Cal.5th at p. 1220; *In re H.W.*, *supra*, 6 Cal.5th at p. 1073; *Tarrant Bell Property, LLC*, *supra*, 51 Cal.4th at p. 542.) In this case, the legislative history of Senate Bill No. 81 is dispositive.

The parties agree that Senate Bill No. 81's legislative history establishes that the Legislature did not intend to create a rebuttable presumption in favor of dismissal. (See OBM 10-13.) The language of section 1385, as enacted, "replaced earlier proposed language that would have mandated 'a presumption that it is in the furtherance of justice to dismiss an enhancement' that could only 'be overcome by a showing of clear and convincing evidence that dismissal of the enhancement would endanger public safety.'" (*Ortiz*, *supra*, 87 Cal.App.5th at p. 1096, quoting Sen. Bill No. 81, as amended Aug. 30, 2021; see also Assem. Com. on Appropriations, Analysis of Sen. Bill No. 81 (2021-2022 Reg. Sess.), as amended Jul. 1, 2021, Jul. 14, 2021, p. 1 [Before being amended, Senate Bill No. 81 created "a presumption that it is in the furtherance of justice to dismiss an enhancement" and

"[r]equires a court to dismiss an enhancement" unless a "showing, by clear and convincing evidence, that dismissal . . . would endanger public safety."].) "Had the Legislature intended to establish a rebuttable presumption . . . , it could have approved the language of the earlier version of the bill." (*Ortiz, supra*, 87 Cal.App.5th at p. 1097.) The Legislature's decision not to do so is therefore significant, and a presumption should not be grafted onto section 1385 based on the "great weight" language that was meant to replace a presumption.

Senate Bill No. 81's legislative history "also reflects a legislative recognition that a trial court's exercise of sentencing discretion involves more than a strictly binary weighing of mitigation against public safety." (*Ortiz*, *supra*, 87 Cal.App.5th at p. 1097.) As reflected in section 1385, subdivision (c)(4), the Legislature "[c]larifie[d] that the [mitigating factors] list is not exhaustive and that the court maintains authority to dismiss or strike an enhancement in the interests of justice." (Sen. Rules Com., Off. of Sen. Floor Analysis, Analysis of Sen. Bill No. 81 (2021-2022 Reg. Sess.), as amended Aug. 30, 2021, p. 3; see also Assem. Com. on Public Safety, Analysis of Sen. Bill No. 81 (2021-2022 Reg. Sess.), as amended Apr. 27, 2021, Jun. 29, 2021, p. 4.) Senate Bill No. 81 sought to provide "guidance" for a trial court's exercise of discretion under section 1385, and the absence of a presumption in favor of dismissal is fully consistent with that purpose. (Assem. Com. on Public Safety, Analysis of Sen. Bill No. 81 (2021-2022 Reg. Sess.), as amended Apr. 27, 2021, Jun. 29, 2021, p. 4; see also *People v. Johnson* (2022) 83 Cal.App.5th 1074,

1091 [enactment of Senate Bill No. 81 "reinforced" conclusion that "Legislature intended to confer on trial courts a range of sentencing options and broad discretion to choose among them"].)

Moreover, the Legislature's removal of a rebuttable presumption is consistent with the flexible character of some of the enumerated factors. "For example, a 'connect[ion] to mental illness' does not, as a practical matter, lend itself to the one-size-fits-all formalism of a presumption that may only be overcome by a danger to public safety. In the universe of cases where a defendant suffers from mental illness, the strength of the connection between the mental condition and the commission of the current offense will vary widely depending on a host of factors such as the character of the mental illness, the nature of the symptoms exhibited near the time of the offense, the defendant's amenability to treatment, and the nature of the particular offense." (*Ortiz*, *supra*, 87 Cal.App.5th at p. 1097.)

In sum, in light of the plain language of section 1385 and the legislative history of Senate Bill No. 81, the amendment to section 1385 that requires trial courts to "afford great weight" to enumerated mitigating circumstances does not create a rebuttable presumption in favor of dismissing an enhancement unless the trial court finds dismissal would endanger public safety. Rather, the language reflects a legislative determination that a trial court should give certain mitigating factors increased significance and importance in the overall balancing of factors for the court's ultimate exercise of discretion under section 1385.

D. The construction of "great weight" in *Martin* is inapplicable

Although Walker does not cite *People v. Martin*, *supra*, 42 Cal.3d 437, in his opening brief on review, he relied on it extensively in his briefing before the Court of Appeal. (See AOB 12-16; ARB 7-10.) The Court of Appeal, however, correctly determined that *Martin*'s construction of "great weight" should not be applied to section 1385. (See opn. 14-15.)

Martin addressed a fundamentally different issue from the one presented here. It concerned a provision of the Determinate Sentencing Law requiring that the Board of Prison Terms (now known as the Board of Parole Hearings) "review every sentence 'to determine whether the sentence is disparate in comparison with the sentences imposed in similar cases.'" (*Martin*, *supra*, 42 Cal.3d at p. 441.) If the Board found a particular sentence disparate, the statute required the sentencing court to schedule a new hearing to reconsider the sentence. (*Id*. at p. 441, fn. 2.) This Court granted review in *Martin* to consider how much weight the sentencing court should give to a finding of disparity by the Board. (See *id*. at pp. 445-448.)

The Court answered that question by invoking precedent addressing judicial deference to determinations by an administrative agency on a subject of agency expertise. In particular, *Martin* endorsed the framework of *People v. Herrera* (1982) 127 Cal.App.3d 590, which held that "the Board's finding

of disparity is entitled to great weight in the trial court's determination of whether resentencing is proper." (*Id.* at p. 595; see also *Martin*, *supra*, 42 Cal.3d at p. 445.)[6] *Martin* gave content to that framework by looking to cases assigning "great weight" to "a Youth Authority recommendation that a juvenile convicted of crime be committed to the [A]uthority instead of state prison." (*Id.* at p. 447.) In light of the Authority's expertise regarding juveniles' amenability to training and treatment, those cases held that the Authority's recommendations should be followed by the trial court unless the court found substantial evidence of countervailing considerations of sufficient weight to

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[6] *Herrera* adopted that framework based on the principle that "[t]he construction of a statute by the officials charged with its administration, although not controlling, is entitled to great weight." (*Herrera*, *supra*, 127 Cal.App.3d at p. 600.) The cases relied on by *Herrera* reflect that general principle of administrative law. (See *Carmona v. Div. of Industrial Safety* (1975) 13 Cal.3d 303, 310 ["an administrative agency's interpretation of its own regulation obviously deserves great weight"]; *Whitcomb Hotel v. Cal. Employment Com.* (1944) 24 Cal.2d 754, 756 ["The construction of a statute by the officials charged with its administration must be given great weight . . ."]; *Los Angeles County v. Frisbie* (1942) 19 Cal.2d 634, 643 ["The contemporaneous and practical construction of a statute by those whose duty it is to carry it into effect, while not controlling, is given great respect"]; cf. *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12 [courts accord "great weight and respect" to quasi-legislative rules adopted by administrative agencies].) Notably, even in this administrative deference context, the "great weight" standard does not create a presumption.

overcome them. (*Ibid.*, citing *People v. Carl B.* (1979) 24 Cal.3d 212, 219; *People v. Javier A.* (1985) 38 Cal.3d 811, 819.) *Martin* adopted a similar standard for judicial review of the Board's finding that a sentence is disparate: "the trial court must accept the board's finding of disparity unless based upon substantial evidence it finds that the board erred in selecting the appropriate comparison group or in determining that defendant's sentence differs significantly from that imposed upon most members of that group." (*Ibid.*, fn. omitted.)

The standard adopted by *Martin* is a sensible one when courts are reviewing an agency's fact-intensive determination in its area of expertise. But it does not provide a sensible answer to the question presented here: how a court should carry out a statutory requirement to give "great weight" to a non-exhaustive list of factors in making a sentencing determination in the first instance. (§ 1385, subd. (c).) In this context, there is no preexisting agency "finding" that the court can "accept" or "follow[] in the absence of 'substantial evidence of countervailing considerations of sufficient weight to overcome the [finding].'" (*Martin*, *supra*, 42 Cal.3d at p. 447.)[7]

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[7] Other uses of the term "great weight" are similarly unhelpful here. For instance, courts and the Legislature use the phrase "great weight" to connote deferential judicial review of a finding by an administrative agency or an inferior court. (See, e.g., *In re Sakarias* (2005) 35 Cal.4th 140, 151 [referee's findings are not binding, but are entitled to "great weight" when supported by substantial evidence]; Gov. Code, § 11425.50, subd.
(continued…)

Finally, as the Court of Appeal properly concluded, a letter by the legislator who authored Senate Bill No. 81 does not reflect an intent by the Legislature to enact the *Martin* standard. (See opn. 14-15.) The letter was not included in Senate or Assembly committee analyses. (*People v. Johnson* (2015) 234 Cal.App.4th 1432, 1444, fn. 6 [taking judicial notice of author's comments when they were including in committee analyses].) The letter was published in the Senate Daily Journal *after* the Legislature passed Senate Bill No. 81. (See Sen. Nancy Skinner, letter to Secretary of the Sen. (Sept. 10, 2021) 121 Sen. J. (2021-2022 Reg. Sess.) p. 2638.) In it, the author commented "it was *my* intent that this great weight standard [in section 1385] be consistent with [*Martin*]." (*Ibid.*, italics added.) As the Court of Appeal correctly concluded, this letter is entitled to little or no weight because it reflects a single legislator's views, and there is no evidence the Legislature was aware of or agreed with this

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(…continued)

(b) ["on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it"].) In the context of section 1385, though, "great weight" is more naturally understood as establishing a special process for sentencing determinations that gives primacy to the enumerated mitigating factors. (*Ortiz*, *supra*, 87 Cal.App.5th at p. 1096 [section 1385 directs courts to holistically balance any relevant factors "with special emphasis on the enumerated mitigating factors"].)

comment when it enacted Senate Bill No. 81. (See, e.g., *People v. Garcia* (2002) 28 Cal.4th 1166, 1175, fn. 6 ["[W]e deny defendant's request to take judicial notice of the authoring legislator's press releases and letters."]; *People v. Cruz* (1996) 13 Cal.4th 764, 780, fn. 9; *Simgel Co., Inc. v. Jaguar Land Rover North America, LLC* (2020) 55 Cal.App.5th 305, 321, fn. 1; *People v. Tarkington* (2020) 49 Cal.App.5th 892, 905, abrogated on other grounds by *Lewis*, *supra*, 11 Cal.5th 952; *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1063.)

Accordingly, *Martin*'s construction of "great weight" as a standard for judicial review of an agency determination is not applicable to section 1385.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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September 15, 2023

CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER BRIEF ON THE MERITS** uses a 13 point Century Schoolbook font and contains 6,095 words.

ROB BONTA
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/S/ CHRISTOPHER G. SANCHEZ
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September 15, 2023

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Maurice Walker** No.: **S278309**

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 that is submitted electronically is transmitted using the Court's TrueFiling system. Participants who are registered with TrueFiling will be served electronically. Participants 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 15, 2023**, I caused the attached **ANSWER BRIEF ON THE MERITS,** to be electronically served by transmitting a true copy via this Court's TrueFiling system to:

Jason Szydlik, Esq.
Attorney for Appellant
E-mail: jason@sfworklaw.com

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 15, 2023**, 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 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

David Slayton, Court Executive Officer / Clerk
Los Angeles County Superior Court
for delivery to: Hon. David R. Fields, Judge
111 North Hill Street
Los Angeles, CA 90012

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I also served the attached **ANSWER BRIEF ON THE MERITS,** by transmitting a true copy via electronic mail using my email address lici.garcia@doj.ca.gov to:

Renee Rose
Attorney at Law
Office of the District Attorney

CAP-LA
California Appellate Project

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **September 15, 2023**, at Los Angeles, California.

Lici Garcia	***/s/ Lici Garcia***
Declarant	Signature

CGS:lxg
LA2023601296

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
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Supreme Court of California

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Date

/s/Lici Garcia
Signature

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