

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 REPLY 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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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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**APPELLANT’S REPLY BRIEF ON THE MERITS**

**INTRODUCTION**

Respondent agrees with appellant that the amendment to Penal Code<sup>1</sup> 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 unless the trial court finds dismissal would endanger public safety. (ABM 26; OBM 12-13.)

Although respondent agrees with appellant that the Court of Appeal misconstrued section 1385, subdivision (c)(2)’s “great weight” standard, respondent asks this court to affirm the judgment. (ABM 31.) Appellant asks this court to reverse the Court of Appeal’s judgment and remand his case so the Court of Appeal can reevaluate whether the trial court properly applied the correct “great weight” standard when it declined to strike his enhancements. (OBM 13.)

Respondent also proposes its own construction of section 1385, subdivision (c)(2)’s “great weight” standard:

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

[T]he 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.

(ABM 26.) In doing so, respondent argues that the construction of "great weight" in this court's opinion in *People v. Martin* (1986) 42 Cal.3d 437 is inapplicable. (ABM 27-31.) Appellant argues that the Legislature intended section 1385, subdivision (c)(2)'s "great weight" standard to be consistent with *Martin's* "great weight" standard.

### ARGUMENT

#### **I. THIS COURT SHOULD REVERSE THE COURT OF APPEAL'S JUDGMENT AND REMAND THIS CASE SO THE COURT OF APPEAL CAN REEVALUATE WHETHER THE TRIAL COURT PROPERLY APPLIED THE CORRECT "GREAT WEIGHT" STANDARD WHEN IT DECLINED TO STRIKE APPELLANT'S ENHANCEMENTS.**

##### **A. The Court of Appeal's Implied Finding that the Trial Court Found that Dismissal of Appellant's Enhancements Would Endanger Public Safety.**

The Court of Appeal made an implied finding that the trial court found that dismissal of appellant's enhancements would endanger public safety:

[D]efendant argues that the trial court made no express finding that dismissal of the enhancements would 'endanger public safety' and instead found only that dismissal would not be in the furtherance of justice. However, because whether dismissal of an enhancement is "in the furtherance of justice" is an ultimate finding that necessarily rests on a subsidiary finding that dismissal would endanger public safety under the terms of section 1385, subdivision (c), we may imply a finding of the latter from its express finding of the former. [Citations.]

(Opn. at pp. 17-18.)<sup>2</sup> The Court of Appeal’s implied finding depended on its erroneous holding that section 1385, subdivision (c)(2) “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* (2022) 86 Cal.App.5th 386, 391; contra *People v. Ortiz* (2023) 87 Cal.App.5th 1087, 1098, review granted Apr. 12, 2023, S278894, [“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”].)

**B. The Record Shows that the Trial Court Found that Dismissal of Appellant’s Enhancements Would Not Endanger Public Safety.**

The trial court found that dismissal of appellant’s enhancements would not endanger public safety. (RT 1503-1504.) During resentencing, the trial court commented that, under section 1385, subdivision (c)(2), it need not afford great weight to evidence of the enumerated mitigating circumstances if it finds that dismissal of a particular enhancement would endanger public safety. (RT 1503; see *People v. Mendoza* (2023) 88 Cal.App.5th 287, 296, fn. omitted, review den. Apr. 26, 2023, S279144 [“if the court finds that dismissal of an enhancement ‘would endanger public safety,’ then the court need not consider

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<sup>2</sup> Appellant quotes from the unpublished portion of the Court of Appeal’s opinion. (PFR exh. A, pp. 17-18.) The text here includes the language the Court of Appeal added in its order modifying the opinion and denying rehearing. (PFR exh. B, p. 2.)

the listed mitigating circumstances”].) The trial court remarked, “I’m interested to know what the People’s position is on the public safety issue.” (RT 1503.)

The prosecutor responded, “I think the public safety issue is directed at specific information that the People would have, that the defendant is a danger—a public safety danger.” (RT 1503.) She added, “I don’t think it’s a generalized danger, which I think exists with this defendant. It’s more of a specific danger.” (RT 1504.)

The trial court agreed with the prosecutor that “endanger public safety,” as used by the statute, refers to a “specific danger” rather than a “generalized danger.” (RT 1503-1504.) It observed that section 1385, subdivision (c)(2) defines “endanger public safety” to mean that “there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.” (RT 1503.) It concluded, “I would think it’s to others, meaning specifically in this case.” (RT 1503-1504.)

The prosecutor replied, “I don’t have anything specific that I can articulate to the court about this defendant and a specific danger to somebody in this case.” (RT 1504.) She reported that one victim, Mr. Williams, had died in 2016 and that her investigator had been unable to reach the other victim, Ms. Johnson. (RT 1504.)

The prosecutor instead emphasized that the court retains discretion under section 1385, subdivision (c), even when there is evidence of the enumerated mitigating circumstances: “I think what the court is able to do, the court shall dismiss an



enhancement unless it is in the interest of the furtherance of justice not to do so. [¶] And so that’s sort of the element that I’m addressing the court with. It’s in the furtherance of the justice not to dismiss the enhancements.” (RT 1505.)

The trial court ultimately agreed; when it announced its decision not to strike either of appellant’s enhancements, it explained, “I don’t find that it’s in the interest of justice—despite the new law under 1385 to dismiss the enhancements, even though there are multiple enhancements in this case.” (RT 1518.) It would not have mentioned the “multiple enhancements in this case” if it had found that dismissal of appellant’s enhancements would endanger public safety—the multiple enhancements would have been irrelevant. (RT 1503; § 1385, subd. (c)(2); see *People v. Mendoza, supra*, 88 Cal.App.5th 287, 296, fn. omitted [“if the court finds that dismissal of an enhancement ‘would endanger public safety,’ then the court need not consider the listed mitigating circumstances”].)

The parties agree that the Court of Appeal misinterpreted section 1385, subdivision (c)(2)’s “great weight” standard. This court should remand appellant’s case so the Court of Appeal can reevaluate whether the trial court properly applied the correct “great weight” standard when it declined to strike appellant’s enhancements. (See *People v. Raybon* (2021) 11 Cal.5th 1056, 1086.)

**II. THIS COURT SHOULD CONSTRUE SECTION 1385, SUBDIVISION (C)(2)’S “GREAT WEIGHT” STANDARD TO BE CONSISTENT WITH THE “GREAT WEIGHT” STANDARD IN *PEOPLE V. MARTIN* (1986) 42 CAL.3D 437.**

**A. The “Great Weight” Standard in *People v. Martin* (1986) 42 Cal.3d 437.**

In *People v. Martin, supra*, 42 Cal.3d 437, this court observed that former “section 1170, subdivision (f) of the determinate sentence law require[d] the Board of Prison Terms to review every sentence ‘to determine whether the sentence [was] disparate in comparison with the sentences imposed in similar cases.’” (*Id.* at p. 441, fn. omitted.) “[T]he determination of the board that a sentence is disparate is entitled to ‘great weight.’ [Citation.]” (*Id.* at p. 446.) The board’s determination’s entitlement to “great weight” does not “automatically require [the trial court] to recall its sentence,” but “giving great weight to the finding does require the court to recall its sentence unless there is substantial evidence of countervailing considerations which justify a disparate sentence.” (*Id.* at p. 448, fn. omitted.)

This court explained the need for this stringent standard: “Requiring the trial judge merely to ‘consider’ the finding of disparity, as the dissent proposes, gives no weight at all to that finding. The judge would remain free to disregard the finding for any reason, or no reason at all.” (*Id.* at p. 448.)

**B. The Legislature Intended Section 1385, Subdivision (c)(2)’s “Great Weight” Standard to Be Consistent with *Martin*’s “Great Weight” Standard.**

Respondent argues that “[t]he construction of ‘great weight’ in *Martin* is inapplicable.” (ABM 27.) Appellant disagrees.

The plain, commonsense meaning of “great weight” is ambiguous. (See *People v. Martin, supra*, 42 Cal.3d 437, 446 [“The problem is one of defining what is meant, in each step of the analysis, by according ‘great weight’ to the board’s

determination”].) Section 1385 does not define “great weight” or explain how courts should apply subdivision (c)(2)’s “great weight” standard. This court may resort to extrinsic aids to construe it. (*People v. King* (2006) 38 Cal.4th 617, 622.)

In a letter printed in the September 10, 2021, Senate Daily Journal, Senator Nancy Skinner, the Senate author of Senate Bill No. 81, wrote, “I wish to clarify that in establishing the ‘great weight’ standard in SB 81 for imposition or dismissal of enhancements [Penal Code section 1385(c)(2)] it was my intent that this great weight standard be consistent with the case law in California Supreme Court in *People v. Martin* 42 Cal.3d (1986). [¶] Thank you for this opportunity to clarify the intent of SB 81.” (Sen. Daily Journal, Sept. 10, 2021, pp. 2638-2639.)

Respondent argues that “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 comment when it enacted Senate Bill No. 81. [Citations.]” (ABM 30-31.) However, Senator Skinner’s letter concludes, “Thank you for this opportunity to clarify the intent of SB 81.” (Sen. Daily Journal, Sept. 10, 2021, p. 2639.) The Senate Daily Journal published it with the Senate’s unanimous consent on September 10, 2021, well before Governor Newsom approved Senate Bill No. 81, on October 8, 2021. (Stats. 2021, ch. 721, § 1.) This timing suggests that the Assembly and the governor, like the Senate, accepted Senator Skinner’s letter as an “opportunity to clarify the intent of SB 81.” (Sen. Daily Journal, Sept. 10, 2021, p. 2639.) The Assembly had sufficient time to respond to her letter, and

Governor Newsom could have vetoed the bill. (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’”].) The Court of Appeal rejected Senator Skinner’s letter (*People v. Walker, supra*, 86 Cal.App.5th 386, 399-400), but other courts have relied on it. (*People v. Anderson* (2023) 88 Cal.App.5th 233, 240-241, review granted, Apr. 19, 2023, S278786; *People v. Lipscomb* (2022) 87 Cal.App.5th 9, 19-20, review den. Mar. 22, 2023, S278429.)

Respondent also argues that “*Martin* addressed a fundamentally different issue from the one presented here.”

(ABM 27.) It explains:

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.)

(ABM 29, fn. omitted.) Appellant agrees that there is no agency “finding”; instead, the Legislature, through the statute, provides the “finding”:

[T]he 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 ....

(§ 1385, subd. (c)(2).) *Martin* is workable here.

Senator Skinner’s letter shows that the Legislature intended section 1385, subdivision (c)(2)’s “great weight” standard to be consistent with *Martin*’s “great weight” standard. This court should construe section 1385, subdivision (c)(2) to mean that the court must dismiss an enhancement if one or more enumerated mitigating circumstances is present unless there are “countervailing considerations of sufficient weight to overcome the recommendation.’ [Citations.]” (*People v. Martin, supra*, 42 Cal.3d 447.)

**C. This Court Should Reject Respondent’s Proposed Construction of Section 1385, Subdivision (C)(2)’s “Great Weight” Standard Because It Does Not Provide Adequate Guidance to Trial Courts.**

Respondent proposes the following construction of section 1385, subdivision (c)(2)’s “great weight” standard:

[T]he 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.

(ABM 26.) This construction is too vague to provide the clear guidance the Legislature intended to give trial courts:

Current law has a standard for dismissing sentencing enhancements that lacks clarity and does not provide judges clear guidance on how to exercise this discretion. A ruling by the California Supreme Court noted that the law governing when judges should impose or dismiss enhancements remains an “amorphous concept,” with

discretion inconsistently exercised and underused because judges did not have adequate guidance.

Building on the California Rules of Court that guide judges in certain sentencing decisions, SB 81 aims to provide clear guidance on how and when judges may dismiss sentencing enhancements and other allegations that would lengthen a defendant's sentence. By clarifying the parameters a judge must follow, SB 81 codifies a recommendation developed with the input of judges who serve on the Committee on the Revision of the Penal Code for the purpose of improving fairness in sentencing while retaining a judge's authority to apply an enhancement to protect public safety.

(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. 5.) The Legislature sought clarity. This court should reject respondent's proposed construction of section 1385, subdivision (c)(2)'s "great weight" standard and construe it to be consistent with *Martin's* "great weight" standard.

### **CONCLUSION**

The parties agree that this court should hold that 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 unless the trial court finds dismissal would endanger public safety.

Appellant asks this court to reverse the Court of Appeal's judgment and remand his case so the Court of Appeal can reevaluate whether the trial court properly applied the correct "great weight" standard when it declined to strike his enhancements. (See *People v. Raybon, supra*, 11 Cal.5th 1056, 1086.)

Appellant also asks this court to reject respondent's proposed construction of section 1385, subdivision (c)(2)'s "great weight" standard and construe it to be consistent with the "great weight" standard in *People v. Martin, supra*, 42 Cal.3d 437.

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 2,528 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 October 5, 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 **REPLY 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.

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Maurice Walker

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

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I electronically served the attached **REPLY BRIEF ON THE MERITS** to the following parties on the date below via email at capdocs@lacap.com.

California Appellate Project Los Angeles  
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Los Angeles, CA 90071

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on October 5, 2023.

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Jason Szydlik

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **PEOPLE v. WALKER**

Case Number: **S278309**

Lower Court Case Number: **B319961**

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