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SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUPREME COURT
FILED

DEC 30 2019

THE PEOPLE,

Plaintiff and Respondent,

vs.

MISAEEL VENCES MAYA,

Defendant and Appellant.

) Crim. No. S255371

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) 2nd Crim. No. B290589

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Jorge Navarrete Clerk

Deputy

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

APPELLANT'S REPLY BRIEF ON THE MERITS

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ARGUMENT

I. MATTER SHOULD BE REMANDED FOR NEW EXPUNGEMENT HEARING AS RESPONDENT HAS CONCEDED THAT STATUTE ENCOMPASSES GOOD CONDUCT IN CUSTODY AS PART OF AN HONEST AND UPRIGHT LIFE.

A. Introduction.

Respondent has conceded that Penal Code section 1203.4a, subdivision (a) does not preclude a court from considering a petitioner's time spent in custody in determining whether he or she has lived an honest upright life after the date of judgment. (Answer Brief pp. 39-40.)¹ As such, the matter should be remanded for a new hearing as suggested by Justice Tangeman in his dissenting opinion in *People v. Maya*. "I would reverse and remand for an evidentiary hearing on whether [appellant] conformed his behavior to the laws of the land for one year following the pronouncement of judgment." (*People v. Maya* (2019) 33 Cal.App.5th 266, 273 (Tangeman, J., dissenting).)

B. Remand Is Necessary to Resolve Remaining Factual Questions.

Although conceding the legal question for which this Court has granted review, respondent argues that a remand is not necessary. (Answer Brief p. 43.) This is incorrect because the lower court never made any

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

specific factual determinations about appellant's behavior while in immigration custody. Instead, the lower court agreed with the prosecution that custodial time could not be considered as a relevant factor since appellant had not demonstrated good behavior outside of a custodial setting. (RT 39, 41, 49-50, 53).

The majority in *Maya* affirmed this ruling on the legal question and did not consider evidence of appellant's good conduct while in custody. As such, the majority only addressed the means by which an honest and upright life can be legally established under the expungement statute. (*People v. Maya, supra*, 33 Cal.App.5th at p. 270.) Thus, the majority decision is based on its resolution of a pure legal question rather than a factual question. It is well settled that pure questions of law or mixed questions of law and fact that are predominantly legal in nature are reviewed de novo. In contrast, resolution of factual questions are reviewed under the deferential substantial evidence standard. (*People v. Louis* (1986) 42 Cal.3d 969, 985-987.)

The majority in *Maya* stated that "a model prisoner is not necessarily a model citizen." (*People v. Maya, supra*, 33 Cal.App.5th at p. 267.) It was not a situation where the majority reviewed a lower court's assessment of an inmate's specific conduct while in custody and deferred to its factual finding that the inmate made insufficient progress in custody to warrant

expungement. The majority held that an inmate's good conduct and achievements while in custody do not qualify as "honest and upright" living because the inmate is not subject to outside temptation while in custody. (*Maya*, at p. 270.)

The majority opinion in *Maya* summarized the lower court's ruling as follows: "In ruling against [appellant], the trial judge stated that [appellant] 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." (*People v. Maya, supra*, 33 Cal.App.5th at p. 268.) In discussing the lower court's denial of the motion for reconsideration, the majority opinion noted that "the trial court decided that being 'in custody for substantial periods of time' cannot be considered leading an 'honest and upright life' as required by statute: '[Appellant] has never been released from custody [and there was] no opportunity . . . to determine whether he leads a law-abiding life when out of custody . . .'" (*People v. Maya*, at p. 269.)

The majority opinion affirmed by holding that "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.” (*Id.*, at p. 270.) Later in the decision, the majority opinion again emphasized the lower court’s ruling that there had been no opportunity to determine whether appellant could lead a law abiding life outside of a custodial setting. (*Id.*, at p. 271.)

At one point, the majority opinion stated that the court did not abuse its discretion when it refused to consider custodial time as part of an honest and upright life. “The trial court did not abuse its discretion by concluding that [appellant] has not established that he has led an honest and upright life during his state and federal custody.” (*People v. Maya, supra*, 33 Cal.App.5th at p. 270.) This phrasing was awkward because it referred to a ruling on legal question which is not subject to the abuse of discretion standard of review. Unlike a factual determination, a lower court’s ruling on a pure legal question is subject to independent or de novo review. (*People v. Louis, supra*, 42 Cal.3d at pp. 985-987)

There is nothing in the record to indicate that the lower court was willing to consider appellant’s custodial time as part of an honest and upright life but found the factual evidence insufficient to warrant expungement relief. Furthermore, if the case had been decided on the lower court’s exercise of discretion in resolving a factual question, then it is unlikely this Court would have granted review in the first place. (Cal. Rules

of Court, rule 8.500(b)(1).) Thus, respondent misconstrues the ruling of the lower court and the Court of Appeal.

If, as respondent now concedes, section 1203.4a, subdivision (a) encompasses evidence of a petitioner's custodial conduct as a factor in granting expungement, then a lower court does not have discretion to just refuse its consideration. If this Court accepts respondent's concession on the legal question and, decides that evidence of good conduct in custody is a factor, then remand is necessary so that the lower court can make the appropriate factual findings which would then be subject to deference on appeal. (*Louis*, at pp. 985-987.)

Remand would not be an effort in futility. The record is unclear what additional evidence appellant could have presented at the expungement hearing if the court had not refused to consider custodial conduct. It should be noted that appellant informed the court that he had taken AA classes and had participated in fire camp. (RT 37.) If the legal question had been resolved in appellant's favor, then appellant could have further developed his factual claim by offering additional available evidence of good conduct while he was in custody or he could have requested a continuance in order to obtain further evidence. Thus, on remand, appellant may be able to present additional evidence of good conduct while in custody.

C. Court Should Consider Both Custodial Compliance and Affirmative Evidence of Good Conduct.

Respondent seeks to limit consideration of good custodial time to evidence of affirmative good behavior. (Answer Brief pp. 36-38.) Such a formula is too restrictive. Rather a court should be allowed to assess a petitioner's custodial time on a case-by-case basis. If, for example, a petitioner shows affirmative evidence of reform *after* being released from custody, and such evidence is combined with evidence that he abided by custodial rules, then a court should be allowed to consider all of these circumstances in deciding whether to grant expungement relief.

In contrast, if a petitioner has not shown any affirmative evidence of reform *after* being released from custody, then a court might reasonably determine that his mere prior compliance with custodial rules does not justify expungement. In any event, the court can assess how much weight should be given to mere compliance with custodial rules on an individual basis. Such a flexible approach also takes into account that opportunities to obtain "affirmative evidence" of good conduct or reform may be limited in certain county jails throughout the state due to budget constraints. In addition, a petitioner may have been in a county jail where the inmates were locked down for substantial periods of time for reasons beyond his control.

Thus, the absence of what respondent terms "affirmative evidence of good conduct" should not be dispositive.

The particular county jail might not have offered substance abuse programs, work opportunities, or educational services. This should not be held against a petitioner especially if he or she has taken affirmative steps at reform *after* release from custody. In addition, if the petitioner obeyed all custodial rules and has shown affirmative evidence of reform *after* release, then expungement relief could open a path to employment or other benefits that could lead to further reform. In sum, the lower court can assess the particulars of a petitioner's custodial conduct along with all of the other facts and circumstances presented to it.

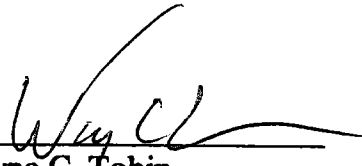
Thus, it is more reasonable to allow courts to consider an inmate's conduct in custody on a case-by-case basis. A statute should be interpreted in a manner that leads to a more reasonable outcome. (*Alford v. Pierno* (1972) 27 Cal.App.3d 682, 688.) If a petitioner's good conduct is limited to mere compliance with the rules, then the court is free to give it any weight it deserves along with other evidence presented at the hearing. Mere compliance with custodial rules is unlikely to carry much weight with a court absent affirmative evidence of reform *after* release from custody. On the other hand, if a petitioner complied with custodial rules and has taken affirmative steps at reform *after* release, then granting expungement under section 1203.4a, subdivision (a) could lead to a petitioner obtaining employment or other benefits that could reduce the risk of recidivism.

II. CONCLUSION.

For the reasons set forth above and in the appellant's opening brief on the merits, the Court of Appeal's decision should be reversed. The matter should be remanded for a new hearing.

DATED: December 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 S255371. I have examined the word count for the appellant's reply brief on the merits . The word count is 1,651 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 December 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 December 26, 2019, I served the within

APPELLANT'S REPLY BRIEF ON THE MERITS

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
600 West Broadway, Suite 1800
San Diego, CA 92101
Attn: Ms. Helen H. Hong

Misael Vences Maya
511 Santa Ana Boulevard
Oakview, CA 93022

Note: The Office of the State Attorney General was also served this day via e-mail at the following address: helen.hong@doj.ca.gov

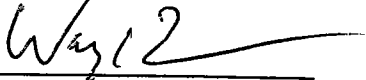
Ventura County District Attorney
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Ventura County Superior Court
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For delivery to the
Hon. Bruce Young

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

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

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



Wayne C. Tobin