IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **SCOTLANE McCUNE,** **Defendant and Appellant.**	**S276303** First District Court of Appeal No. A163579 Napa County Superior Court No. CR183930

APPELLANT'S REPLY BRIEF ON THE MERITS

On Review from the Decision of the Court of Appeal,
First Appellate District, Division Five

Appeal from the Judgment of the Superior Court of the State of California for Napa County,
Honorable Mark S. Boessenecker, Judge

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APPELLANT'S REPLY BRIEF ON THE MERITS

In this brief, Appellant Scotlane McCune will respond to portions of respondent's answer brief on the merits (ABM) where additional comment appears likely to be helpful to this Court in deciding this case. To the extent consistent and possible with that objective, repetition of McCune's earlier briefing will be avoided. The appellant continues to rely on his earlier briefing, and the absence of additional comment on aspects of the Attorney General's brief in this reply should not be taken as a concession of any nature. This effort to keep the briefing as short as possible should not be seen as a lack of confidence in the merits of the matters not addressed. The case and facts are fully and accurately stated in the appellant's opening brief on the merits.

ARGUMENT

I. PENAL CODE SECTION 1203.1 AND 1203.3 APPLY WHERE THE TRIAL COURT ISSUED A RESTITUTION ORDER WITHOUT SPECIFYING AN AMOUNT.

Mr. McCune argues that Penal Code[1] section 1203.3, subdivision (a) limits the trial court's authority to modify an order of probation to the period of time the defendant is on probation, while section 1203.3, subdivision (b)(5) specifically limits the trial court's authority to modify the dollar amount of a restitution order made pursuant to section 1202.4, subdivision (f) to the term of probation. Section 1202.46 is inapplicable to cases where the defendant is sentenced to probation, but even if it were applicable to cases involving probation, section 1203.3 limits section 1202.46's application to the term of probation. Respondent relies on the analysis of *People v. Zuniga* (2022) 79 Cal.App.5th 870, which, as the Court of Appeal below recognized, runs contrary to *Hilton v. Superior Court* (2014) 239 Cal.App.4th 766 and *People v. Waters* (2015) 241 Cal.App.4th 822. (*People v. McCune* (2022) 81 Cal.App.5th 648, 654.) In fact, the force of *Zuniga*'s holding teeters on its conclusion that the trial court's setting of a restitution amount following the termination of probation does not constitute a revocation, modification, or change to the original probation order within the meaning of section 1203.3. (*Zuniga, supra,* 79 Cal.App.5th at p. 877.) Central

[1] All further statutory references are to the Penal Code unless otherwise noted.

to respondent's argument that a trial court retains jurisdiction to set a restitution amount after probation terminates is respondent's contention that section 1203.3 does not apply to cases such as this, where the trial court did not set an amount of restitution prior to probation terminating by operation of law. (See ABM 30-32.) Respondent misconstrues the language and meaning of section 1203.3.

Respondent conflates orders of probation with orders of restitution. Specifically, respondent states that section 1203.3 addresses "an order of probation that was already made," citing to subdivisions (a), (b)(4), and (b)(5) of section 1203.3. (ABM 30.) Section 1203.3, subdivision (a) addresses the court's authority, in relevant part, to modify "its order of suspension of imposition or execution of sentence" during the term of probation. It therefore addresses an order placing the defendant on probation as a whole, not specific terms of probation. On the other hand, Section 1203.3, subdivision (b)(5) specifically speaks to the court's ability to modify the dollar amount of restitution orders during the term of probation. Thus, section 1203.3 is applicable to all cases where the trial court suspends imposition or execution of sentence and places the defendant on probation, including those where an amount of restitution was never set during the term of probation.

Respondent argues that the plain language of section 1203.3, subdivision (b)(5) only applies where the trial court sets an amount of restitution at sentencing and subsequently changes the dollar amount. (ABM 31.) Respondent's argument largely hinges on its assertion that the trial court did not make a

"modification" to the restitution order. (ABM 31.) The plain language of this provision and section 1202.4, subdivision (f) do not support respondent's interpretation. Section 1202.4, subdivision (f) states, in relevant part, that where "the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court." Thus, contrary to respondent's assertion, section 1203.3, subdivision (b)(5) specifically references section 1202.4, subdivision (f)'s envisioned scenario where the court orders restitution at sentencing without setting an amount and later modifies the order to specify an amount.

Respondent's provided definitions of "modify" do not aid respondent's interpretation. When a court's previous restitution order requiring payment to the victim "in an amount to be determined" by the court (CT 63) is changed, altered, or amended to specify dollar amount, that is a modification of the dollar amount of the restitution order as contemplated by sections 1203.3, subdivision (b)(5) and 1202.4, subdivision (f). This Court has implicitly identified that a court modifies a restitution order when it sets an amount previously left unsettled. In *People v. Ford* (2015) 61 Cal.4th 282, 284, the trial court had an imposed a restitution order but did not set an amount until after the term of probation expired. (*Ibid.*) This Court stated, "We need not decide whether a trial court retains jurisdiction to *modify* the amount of restitution once a defendant's term of probation has expired." (*Id.* at p. 284, italics added.) This Court did not reach the question

now at issue in this case because it held that the defendant was estopped from challenging the trial court's exercise of jurisdiction to set the amount of restitution. (*Id.* at pp. 284-285.) However, it is notable that this Court recognized that the setting of a dollar amount constitutes a modification of the amount of restitution.

Respondent points to section 1203.3, subdivision (b)(4)'s language referencing timely payment of restitution obligations as an indication that section 1203.3 as a whole does not apply to cases where the trial court imposed a restitution order but did not specify an amount owed. (ABM 31-32.) In defining the boundaries of section 1203.3, subdivision (a), which gives the court authority to revoke, modify, or change probation during the term of probation, subdivision (b)(4) of that statute simply provides the court leeway to shorten the term of probation where the defendant has timely paid restitution in full. This potential outcome was contemplated in McCune's plea agreement, which stated that his originally imposed five-year probationary term could terminate after three years (two years early) if restitution were paid in full. (CT 41.) Section 1203.3, subdivision (b)(4) does not state nor even suggest, as respondent argues (ABM 32), that the entirety of section 1203.3 only applies to cases where the trial court fixes a restitution amount at sentencing. Respondent's interpretation of section 1203.3 is neither commonsense nor practical, and results in absurdity. (See ABM 33; *People v. Budwiser* (2006) 140 Cal.App.4th 105, 109, citing *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.)

II. *HILTON*, *WATERS*, *GRIFFIN*, AND *CHAVEZ* PROVIDE THE APPROPRIATE ANALYTIC FRAMEWORK WITHIN WHICH TO REVIEW A RESTITUTION ORDER MODIFIED AFTER PROBATION TERMINATES.

Respondent, as did the court of appeal in *Zuniga*, dismisses *Hilton* and *Waters* as inapplicable, arguing that neither case involved a restitution order at sentencing that left the amount to be determined at a later date. (ABM 44.) However, as the Court of Appeal below noted, *Zuniga*'s analysis does not simply distinguish the issue before it from those in *Hilton* and *Waters*; rather, *Zuniga*'s analysis is irreconcilable with *Hilton* and *Waters*. (*McCune, supra*, 81 Cal.App.5th at p. 654.) Despite respondent's insistence that *Hilton* and *Waters* are inapposite, the analyses of the legislative history and interplay between sections 1203.3, 1202.4, and 1202.46 are directly relevant to this case. *Hilton* and *Waters* addressed modifications of restitution orders and both held that the court's authority to modify restitution ends with the termination of probation. While *Hilton* addressed a post-termination modification of an already-specified dollar amount and *Waters* addressed a post-termination modification of a probation order imposing restitution for the first time, respondent cannot point to any reason that those cases do not apply other than the defendants were subject to section 1203.3. (ABM 44.) As discussed *ante*, as a probationer, McCune was also subject to section 1203.3. Furthermore, respondent's suggestion that *Hilton* and *Waters* were not governed by section

1202.4, subdivision (f) is contradicted by the in-depth analyses of section 1202.4 in those two cases.

Hilton explains that this Court in *In re Griffin* (1967) 67 Cal.2d 343, "concluded modification of probation during a defendant's probationary term was permissible, but modification after that term had expired was an act in excess of the trial court's jurisdiction." (*Hilton, supra*, 239 Cal.App.4th at p. 769.) Respondent argues that reliance on *Griffin* is misplaced because the holding in *Griffin* only pertained to the estoppel argument. (ABM 40-41.) However, as *Hilton* notes, this Court and others have relied on *Griffin* as a seminal case that precluded trial courts from modifying a defendant's sentence upon termination of probation. (See *People v. Chavez* (2018) 4 Cal.5th 771, 782-783; *In re Bakke* (1986) 42 Cal.3d 84, 89, 90, fn. 5; *Zuniga, supra,* 79 Cal.App.5th at p. 876; *Waters, supra,* 241 Cal.App.4th at p. 828; *People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1426.)

Respondent also contends that *Chavez, supra*, 4 Cal.5th 771 is inapplicable because it "did not involve any statutes such as sections 1202.4 or 1202.46 that operate to extend the trial court's jurisdiction over a probationer in specific circumstances." (ABM 42.) That *Chavez* did not address the interplay between sections 1202.4, 1202.46, and 1203.3 does not detract from its relevance to the analysis of the scope of a court's authority over a probationer pursuant to section 1203.3. Nor do sections 1202.4 and 1202.46 extend a court's jurisdiction over a probationer. *Chavez*'s recognition of *Griffin*'s findings regarding a court's loss of jurisdiction contradicts respondent's premise that *Griffin*'s

non-estoppel observations do not aid in the analysis. (See *Chavez, supra*, 4 Cal.5th at pp. 782-783.)

As argued in appellant's opening brief on the merits, it must be presumed that "the Legislature was aware of existing related laws and intended to maintain a consistent body of rules." (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199; OBM 44.) The Legislature was aware of *Hilton* and *Waters* when it passed AB 1950. The opening brief on the merits noted two failed bills, AB 2477 and AB 194 (OBM 43-46), which respondent argues are irrelevant. (ABM 46.) To the contrary, they are relevant to show, at a minimum, that the Legislature was aware of the holdings of *Hilton* and *Waters* when it drafted and passed AB 1950. Therefore, it can be presumed that when the Legislature drafted AB 1950 to reduce the term of felony probation to two years as applicable to McCune, it was aware that *Hilton* and *Waters* held that the court's ability to impose or modify a restitution order ends when probation terminates, and that *In re Estrada* (1965) 63 Cal.2d 740 would apply AB 1950 retroactively to active probation cases.

Respondent argues that the California District Attorneys Association's (CDAA) opposition to AB 1950 noted in the legislative history did not discuss the limitations of when the amount of restitution may be determined. (ABM 50; see OBM 46-47; Assem. 3d reading analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.) as amended May 21, 2020; Assem. 3d reading analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.) as amended June 10, 2020); Assem. Com. on Appropriations,

Analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.) May 31, 2020; Assem. Com. on Public Safety, Analysis of Assem. Bill No. 1950 (2019-2020 Reg. Sess.) as amended May 26, 2020.) However, it must be inferred that the CDAA's position addressed the setting or modification of restitution amounts because AB 1950 did nothing to inhibit the ability of victims to collect unsatisfied set restitution amounts under section 1202.4, subdivision (l). CDAA would therefore have no reason to address victim access to restitution orders already delineating a fixed amount owed. Thus, when it passed AB 1950, the Legislature was aware that reducing the maximum term of probation for defendants like McCune would shorten the amount of time a court could modify a restitution order to specify the amount owed.

III. DELINEATING THE TRIAL COURT'S AUTHORITY TO MODIFY RESTITUTION TO THE PROBATIONARY PERIOD DOES NOT IMPEDE A VICTIM'S ABILITY TO SEEK FULL RESTITUTION TO THE EXTENT POSSIBLE.

Respondent repeatedly emphasizes the constitutional mandate that victims receive full restitution regardless of the sentence or disposition imposed. (Cal. Const., art. I, § 28, subd. (b)(13); ABM 26, 35, 39.) However, Article 1, section 28, subdivision (13) of the California Constitution does not specify "full" restitution; rather, it states that "[i]t is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer" (Cal. Const., art. I, § 28,

subd. (b)(13)(A)) and "[r]estitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss" (Cal. Const., art. I, § 28, subd. (b)(13)(B)). As respondent recognizes, section 28, subdivision (b) is not self-executing (ABM 22) and the Legislature has adopted, repealed, and amended provisions to implement this constitutional provision, including the current versions of sections 1202.4, 1203.1, 1203.3, and 1202.46. (See *People v. Vega-Hernandez* (1986) 179 Cal.App.3d 1084, 1091-1092.) While a victim's right to restitution is a constitutional one, "full restitution" is a statutory mandate, not constitutional mandate (*People v. Pierce* (2015) 234 Cal.App.4th 1334, 1337-1338) and thus the Legislature's definition of "full restitution" must be interpreted by way of analyzing the language and context of statutes addressing both probation and restitution.

The Legislature references "full restitution" in section 1202.4, subdivisions (f) and "fully reimburse" in section 1202.4, subdivision (f)(3). In contrast, sections 1202.46, 1203.1, and 1203.3 do not reference any version of "full" restitution or reimbursement. Importantly, section 1202.4, subdivision (f)(3) states "*[t]o the extent possible*, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct . . . ." (§ 1202.4, subd. (f)(3), italics added.) By including the phrase "to the extent possible", the

Legislature signaled its recognition that the court may be unable to ascertain an amount to impose, including when there is no evidence of loss presented at the time of sentencing.

Under the legislative framework of sections 1202.4, 1203.1, and 1203.3, full restitution means full restitution to the extent possible within the probationary period. To hold otherwise would be to ignore the limits the Legislature placed on the court's jurisdiction over defendants who have successfully completed probation. Even assuming, arguendo, that section 1202.46 applies to probation cases, it operates in harmony with section 1203.3, meaning any restitution order last imposed or amended prior to the termination of probation must be considered to be an order for full restitution. (*Hilton, supra,* 239 Cal.App.4th at pp. 781-782; *Waters, supra*, 241 Cal.App.4th at pp. 830-831.) Respondent fails to address section 1202.46's interaction with section 1203.3 as discussed in *Hilton* and *Waters*.

"Full restitution" as mandated by the Legislature means full restitution to the extent possible within the boundaries of the statutory scheme. (§ 1202.4, subd. (f)(3).) This Court recognized this statutory limitation in *People v. Giordano* (2007) 42 Cal.4th 644, stating that the object of restitution imposed following a criminal conviction is to restore the economic status quo "*to the extent that it is possible* when a criminal act has injured a victim . . . ." (*Id.* at p. 658, italics added.) Respondent points out that *Giordano* found that restitution is not limited to economic losses that occurred within a particular time frame or prior to sentencing; however, *Giordano* does not stand for the proposition

that the Constitution allows a trial court to set an amount of restitution without limitation. (See *ibid*.)

Respondent, citing *Giordano* and section 1202.4, subdivision (f)(3)(D), argues that "in some cases the amount of full restitution will not be ascertainable at the time of sentencing, or even for months or years afterwards." (ABM 26; *Giordano, supra*, 42 Cal.4th at pp. 657-658.) While this may be true, pursuant to section 1203.1, subdivision ((a), in this case—as is now the case in many felony probation cases—the trial court had two years of jurisdiction to ascertain the amount of full restitution. In other felony cases excluded from the two-year probation limit pursuant to section 1203.1, subdivision (l), trial courts have up to five years of jurisdiction over a probationer to ascertain to the extent possible the amount of full restitution. And in misdemeanor cases where the probation length has not been otherwise statutorily specified, the trial courts have up to one year to determine the amount required. (§ 1203a.)

There are instances where limits are appropriately placed on the trial court's ability to impose restitution. For example, in *Hilton*, the reviewing court found that the trial court imposed, pursuant to stipulation, full economic restitution based on the information available at the time it imposed restitution. (*Hilton, supra,* 239 Cal.App.4th at pp. 769, 784.) The fact that the victim suffered additional previously unaccounted-for economic losses resulting from the defendant's criminal conduct did not render the previous restitution amount less than "full". (*Id.* at p. 784.) *Hilton*'s focus was on whether the trial court had evidence to

suggest that the restitution order made prior to the termination of probation was unauthorized. (*Ibid.*) Because the trial court was not presented with any evidence that the award was anything less than full, any further modifications beyond the probationary period was in excess of the court's jurisdiction. (*Id.* at pp. 784-785.)

Although the trial court in *Hilton* originally ordered a specific amount of restitution, its reasoning applies here. In the instant case, the injured passenger submitted a restitution claim to the district attorney's office in April 2018, but told a probation officer one month later that he was unsure of the specific amount of restitution he was seeking. (CT 85, 108.) The probation report filed on June 13, 2018, the date of sentencing, indicated that the passenger would seek financial restitution but he was unsure of the specific account. (CT 60, 106, 108.) Two years later, on July 31, 2020, the probation department filed a report indicating that restitution was not an issue because the passenger never responded to probation. (CT 84.) The day before McCune's probation terminated by operation of law, probation filed a second report indicating that the passenger had submitted his restitution claim to the prosecution in April 2018. (CT 85.) The second report did not explain that the passenger had later told a probation officer that he had not yet determined how much restitution he would claim. (CT 85; See CT 108.)

As a result, the trial court's restitution order at sentencing on June 13, 2018, which reserved the court's ability to determine an amount at a later date, was a full and complete restitution

order based on the information presented to the court at that time. McCune successfully completed all requirements demanded of him without violation. (See CT 133.) The court did not modify its restitution order prior to the expiration of probation; thus, full restitution was ordered to the extent possible prior to the termination of probation.

IV. SECTION 1202.46 DOES NOT EXTEND A TRIAL COURT'S JURISDICTION BEYOND THE PROBATIONARY PERIOD.

Respondent argues that section 1202.46 applies to both probation and non-probation cases, urging that section 1203.3 is materially distinct from section 1170 and thus section 1202.46 need not reference section 1203.3 as it does 1170. (ABM 28-29.) However, respondent does not acknowledge that section 1203.3 limits a trial court's authority to any time "during the term of probation." (§ 1203.3, subds. (a), (b)(5).)

Respondent wrongly states that "[a]ppellant does not dispute that section 1202.46 in general operates to continue a trial court's jurisdiction as needed to determine and set a restitution amount." (ABM 25.) Respondent overlooks McCune's argument that assuming, arguendo, that section 1202.46 applies to probation cases, it must be read in harmony with section 1203.3, which leads to the conclusion that 1202.46 does not authorize a court to modify restitution after the probationary term ends. (OBM 40-41.)

Furthermore, respondent wrongly implies that McCune, in distinguishing *People v. Bufford* (2007) 146 Cal.App.4th 966,

argues that the Legislature intended to "exempt probationers from their constitutional obligation to pay restitution" and that the Legislature "intended to potentially deprive crime victims of their right to full restitution." (ABM 38.) McCune does not argue that the Legislature exempted probationers from paying full restitution; rather, as argued *ante*, the Legislature has declined to extend the court's authority to modify restitution beyond the probationary period. Full restitution is restitution ordered to the extent possible prior to the termination of probation.

Bufford is inapposite because it had no cause to consider the statutory framework regarding the court's jurisdiction over a probationer, specifically sections 1203.1 and 1203.3. *Bufford* solely relies on the restitution framework of sections 1202.4 and 1202.46. (See *Bufford, supra,* 146 Cal.App.4th at pp. 970-972.) In fact, *Bufford* specifically notes that "[s]ection 1203.3 does not apply in this case, because defendant was not placed on probation." (*Id.* at p. 970, fn. 4.) This footnote indicates that the reviewing court's analysis may have changed had section 1203.3 come into play; otherwise, the reviewing court would have no cause to acknowledge that provision. (See *Hilton, supra*, 239 Cal.App.4th at p. 782.) While *Waters* noted that *Bufford* was distinguishable because the issue on appeal was whether the trial court could reserve jurisdiction to set the amount of restitution, it also noted that *Bufford* did not involve probation. (*Waters, supra*, 241 Cal.App.4th at p. 831, fn. 5.)

Respondent points to excerpts of section 1202.46's legislative history to support its interpretation that the

Legislature intended section 1202.46 to apply to probation cases as well as non-probation cases. (ABM 34.) However, these excerpts exist solely within the context of the functioning of the CDCR. For example, respondent contends that, "[i]n enacting S.B. 1126, the Legislature specifically noted that '[t]he bill . . . would require the court to retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined when the economic losses of a victim cannot be ascertained at the time of sentencing.'" (ABM 34, quoting Sen. Rules Com., Off. Of Sen. Floor Analyses, Analysis of S.B. 1126 (1999-2000) Reg. Sess.) as amended Sept. 2, 1999.) However, the analysis states:

> DIGEST: This bill deletes the pilot project aspect of a provision in the law that allows the Department of Corrections to arrange for the initial court appearance and arraignment in municipal or superior court to be conducted by a two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. This bill also removes the reporting requirement; the limit on the number of institutions included; and the sunset clause on that provision.
>
> Assembly Amendments (1) add language to clarify procedures relative to restitution orders *in the program* . . . .

(Sen. Rules Com., Off. Of Sen. Floor Analyses, Analysis of Sen. Bill No. 1126 (1999-2000) Reg. Sess.) as amended Sept. 2, 1999, italics added.)

Thus, the Legislature specifically included restitution language to address restitution orders *in the program* that allowed the CDCR to arrange for videoconferencing. It is incontrovertible that SB 1126 was solely concerned with provisions related to inmates subject to CDCR incarceration.

Likewise, respondent cites to the Department of General Services' analysis of SB 1126, which noted that crime victims could suffer losses that could not be readily ascertained but accrue over a long period of time, and that jurisdictional limits caused victims to resort to civil suits. (ABM 34, citing Dept. of General Services, analysis of Sen. Bill No. 1126 (1999-2000 Reg. Sess.) as amended June 16, 1999, pp. 2-3.) Again, respondent fails to acknowledge that this analysis recognized that SB 1126 was drafted to address restitution for prison inmates: the analysis states that the June 16, 1999 amendments to SB 1126 "would allow the state Board of Control (Board) to arrange inmates' restitution hearings to be conducted via CDC's video conference technology. These amendments would also clarify that a sentencing court retains jurisdiction over offenders' restitution obligations even after they are sent to *state prison*." (Dept. of General Services, analysis of Sen. Bill No. 1126 (1999-2000 Reg. Sess.) as amended June 16, 1999, p. 1, italics added.) The analysis further explains, "[t]he bill, as amended, would further the intent of the Board's restitution pilot project by providing a viable and cost-effective way to impose or amend *inmates*' restitution orders. (*Ibid.*, italics added.)

The Department of General Services analysis explains that SB 1126 would implement section 1202.46 for the purpose of explicitly granting trial courts the authority to modify restitution obligations beyond the 120-day limit imposed by (former) section 1170. (Dept. of General Services, analysis of Sen. Bill No. 1126 (1999-2000 Reg. Sess.) as amended June 16, 1999, p. 2.) Former section 1170, subdivision (d) was created as "an exception to the common law rule that the court loses resentencing jurisdiction once execution of sentence has begun." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 455.) Therefore, the Department of General Services analysis indicates that section 1202.46 is yet another exception to the common law rule, providing trial courts the ability to retain jurisdiction even beyond the 120-day period. Probation, on the other hand, is not a creature of common law. Rather, "the authority to grant probation and to suspend imposition or execution of sentence is wholly statutory." (*People v. Howard* (1997) 16 Cal.4th 1081, 1092.) Unlike section 1172.1, subdivision (a)(1)—which now contains the 120-day limit formerly addressed in section 1170, subdivision (d))—the probationary scheme has provided trial courts with a longer time frame to modify the order of probation—the entire length of probation—so it is indubitable that the Legislature solely addressed non-probationary cases when it enacted section 1202.46.

There was no ambiguity about the purpose or function of section 1202.46 that needed to be resolved by the 2016 amendments to sections 1202.4 and 1202.46, as respondent

suggests. The legislative history is clear that section 1202.46 was crafted solely to address issues of restitution pertaining to CDCR inmates. The 2016 amendment of section 1202.46, which eliminated a court's ability to omit a restitution order with a finding of compelling and extraordinary reasons, provides no new insight to change the purpose or function of section 1202.46. Thus, section 1202.46 is inapplicable to probation cases.

CONCLUSION

For the reasons set forth above, this Court should reverse the Court of Appeal's holding that the court retained jurisdiction to determine and award victim restitution after probation had terminated.

DATED: May 15, 2023

Respectfully submitted,

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CERTIFICATION OF WORD COUNT

Pursuant to rule 8.520(c)(1) of the California Rules of Court, I, Kaiya Pirolo, appointed counsel for Scotlane McCune hereby certify that I prepared the foregoing document on behalf of my client, and that the word count for this brief is 4,517, excluding tables. This brief therefore complies with the rule which limits a computer-generated brief to 8,400 words. I certify that I prepared this document in Microsoft Word, and that this is the word count Microsoft Word generated for this document. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 5/15/2023

By:

/s/ KAIYA PIROLO
Kaiya Pirolo
Attorney for Appellant

ATTORNEY'S PROOF OF SERVICE

(Code Civ. Proc., § 1013a, subd. (2); Cal. Rules of Court, rules 8.71(f) and 8.77)

I, Kaiya Pirolo, certify:

I am an active member of the State Bar of California and am not a party to this cause. My electronic service address is kaiya@pirololaw.com and my business address is 1839 Ygnacio Valley Rd, #234, Walnut Creek, CA 94598. On **May 15, 2023**, I served the persons and/or entities listed below by the method checked. For those marked "Served Electronically," I transmitted a PDF version of **Reply Brief on the Merits** by TrueFiling electronic service or by e-mail to the e-mail service address(es) provided below. For those marked "Served by Mail," I deposited in a mailbox regularly maintained by the United States Postal Service at 250 Las Lomas Way, Walnut Creek, CA 94598, a copy of the above document in a sealed envelope with postage fully prepaid, addressed as provided below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 15, 2023, at Walnut Creek, California.

/s/ KAIYA PIROLO
Kaiya Pirolo
SBN 280393

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. McCUNE**
Case Number: **S276303**
Lower Court Case Number: **A163579**

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5/15/2023
Date

/s/Kaiya Pirolo
Signature

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