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 TO THE AMICUS CURIAE BRIEF

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November 30, 2023

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INTRODUCTION

Senate Bill No. 81 amended Penal Code 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; Pen. Code, § 1385, subd. (c)(2).)[1] In light of the plain language of the statute and the legislative history of Senate Bill No. 81, the parties agree that this amendment does not create a rebuttable presumption in favor of dismissing an enhancement unless the trial court finds dismissal would endanger public safety. (See OBM 10-13; ABM 16-31.)

On November 7, 2023, the First District Appellate Project and the California Attorneys for Criminal Justice jointly filed an Amicus Curiae Brief, arguing that section 1385 creates a rebuttable presumption in favor of dismissing enhancements. (ACB 10-23.) Respondent herein files this Answer to the Amicus Curiae Brief. (Cal. Rules of Court, rule 8.520(f)(7).)

ARGUMENT

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

As explained in the Answer Brief on the Merits, the plain language of section 1385 and the legislative history of Senate Bill No. 81 demonstrate that the term "great weight" in section 1385,

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[1] Unless noted, further statutory references are to the Penal Code.

subdivision (c)(2) does not create a rebuttable presumption in favor of dismissing enhancements unless the trial court finds dismissal would endanger public safety. Rather, the "great weight" language is properly understood as providing guidance for the court's exercise of its discretion. (ABM 16-31.) Amici contend otherwise, arguing that the plain statutory language and the legislative history of Senate Bill No. 81 show that the Legislature intended to create a rebuttable presumption. (ACB 10-23.) This contention is unavailing.

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

In support of the contention that the plain language of section 1385 creates a rebuttable presumption in favor of dismissing enhancements, amici contrast the Legislature's use of the term "shall" in section 1385, subdivision (c)(1) with the corresponding use of the term "may" in section 1385, subdivision (a). (ACB 10-14.) Amici argue this distinction provides a strong indication that the Legislature intended to alter section 1385 in favor of dismissing enhancements. (ACB 12.) But amici acknowledge that the term "shall" in subdivision (c)(1) is conditioned on a finding that dismissal must be in the furtherance of justice (see ACB 11), which is the same standard used in subdivision (a). Amici's reliance on the "shall/may" dichotomy is therefore misplaced.

Senate Bill No. 81 did amend section 1385 to guide the trial courts to focus on factors that could weigh greatly in favor of dismissing enhancements. (See *People v. Ortiz* (2023) 87

Cal.App.5th 1087, 1098 [noting that Senate Bill No. 81 sought to "fine tune" a court's exercise of discretion], review granted Apr. 12, 2023, S278894.) But this amendment does not establish that section 1385 contains a presumption. A presumption is an assumption the law *requires* a court to make based on a set of facts. (Evid. Code, § 600; *People v. McCall* (2004) 32 Cal.4th 175, 182.) The term "shall" in subdivision (c)(1) of section 1385 does not require a court to assume that dismissing an enhancement is in furtherance of justice, barring a public danger exception. The plain language of section 1385 allows a trial court to determine "that countervailing factors—other than the likelihood of physical or other serious danger to others—may nonetheless neutralize even the great weight of the mitigating circumstance, such that dismissal of the enhancement is not in furtherance of justice." (*Ortiz*, *supra*, at p. 1098; accord, *People v. Ponder* (Oct. 26, 2023, A166053) 96 Cal.App.5th 1042 [2023 WL 7032525, at *6] ["[W]e agree with *Ortiz* that the court retains discretion under section 1385(c)(2) to choose not to dismiss the enhancement in the furtherance of justice for reasons other than public safety."].)

Amici further argue that the collective use of the "shall/unless" dichotomy and the term "great weight" in section 1385, subdivision (c) supports the conclusion that section 1385 contains a rebuttable presumption. (ACB 12-14.) As explained in the Answer Brief on the Merits, this construction of the statutory language is incorrect. The term "shall" in subdivision (c)(1) is conditioned on a finding that dismissal must be in furtherance of justice. (See ABM 22.) Also, the plain meaning of the term

"great weight," as used in subdivision (c)(2), does not support the creation of a presumption. (See ABM 18-20, 22-23.) Instead, the term "great weight" 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. (See ABM 20-23.)

B. The relevant legislative history confirms section 1385 does not establish a rebuttable presumption in favor of dismissal

Amici argue that Senate Bill No. 81's legislative history supports a conclusion that section 1385 contains a rebuttable presumption in favor of dismissing enhancements because Senate Bill No. 81 was intended to enact recommendations from the Committee on Revision of the Penal Code (Committee). (ACB 15-18.) Amici specifically note that the 2020 Report from the Committee recommended that the Legislature "establish guidelines and presumptions (but not requirements) that judges should consider [when] dismissing sentencing enhancements . . . ." (ACB 16, citing Com. on Revision of the Pen. Code, Annual Report and Recommendations, 2020 Annual Report (Feb. 2021) p. 37 (Report).) The Report also recommended "that the presumptions can be overcome if there is 'clear and convincing evidence that dismissal of the enhancement would endanger public safety.'" (Report, p. 37.)

The Legislature, however, rejected an early version of Senate Bill No. 81 that expressly contained a rebuttable presumption in favor of dismissal that could only be overcome with clear and convincing evidence of public danger, replacing that proposed language with the present version of the statute. (See ABM 24-25.) Senate Bill No. 81's legislative history therefore demonstrates that, although its impetus may have arisen from recommendations by the Committee, the Legislature deviated from the Report's recommendation by adopting a different standard. (*People v. Soto* (2011) 51 Cal.4th 229, 245 ["'The rejection by the Legislature of a specific provision contained in an act as originally introduced is most persuasive to the conclusion that the act should not be construed to include the omitted provision.'"]; *People v. Albillar* (2010) 51 Cal.4th 47, 57 [such rejection or elimination is "significant indicia of legislative intent"].) Amici fail to give sufficient import to this legislative history.

Relying on a post-enactment letter from Senator Nancy Skinner, the author of Senate Bill No. 81, amici also assert that section 1385 "creates a presumption-like burden in favor of dismissal of enhancements" because Senator Skinner's states in the letter that it was her intent that the "great weight" standard in section 1385 be consistent with the standard set forth in *People v. Martin* (1986) 42 Cal.3d 437. (ACB 18-23.) As explained in the Answer Brief on the Merits, this Court should decline to take judicial notice of Senator Skinner's letter as it reflects the views of a single legislator rather than the intent of the Legislature.

(ABM 30-31; see also Opinion 15-16; *Ponder*, *supra*, 2023 WL 7032525, at *6 [noting that Senator Skinner's letter "intended to provide clarity on the *legislator's* intent"], italics added.) There is no evidence the Legislature was aware of or agreed with Senator Skinner's comment regarding the interpretation of the "great weight" language in section 1385 when Senate Bill No. 81 was enacted. (See *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589 [the court does not consider the understandings of individual legislators in construing a statute, and "there is no exception to this principle simply because the legislator whose motives are proffered actually authored the bill in controversy"].) Senator Skinner's letter was not included in the Senate or Assembly committee analyses, and the letter does not discuss arguments made to the Legislature during the passage of Senate Bill No. 81. (*Id.* at p. 590.) Moreover, Senator Skinner's letter was not published as a formal resolution of legislative intent. (*Id*. at pp. 590-591 ["a motion to print a letter of legislative intent commands less respect than a formal resolution of legislative intent"].)

Significantly, the letter was neither supported nor endorsed by the Assembly. As noted in *People v. Anderson* (2023) 88 Cal.App.5th 233, 240, review granted April 19, 2023, S278786, "the Assembly removed the presumption requiring clear and convincing evidence to overcome, replacing it with the more flexible discretionary language that now appears in section 1385, subdivision (c)(2). (See Assem. Amend. to Senate Bill No. 81 (2021-2022 Reg. Sess.) August 30, 2021.)" The full Assembly

passed the bill with the newly amended language on September 8, 2021, and the full Senate concurred with those amendments on September 9, 2021. (<Https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB81>.)

Senator Skinner drafted and presented her letter for inclusion in the Senate Journal on September 10, 2021 (*Anderson*, *supra*, 88 Cal.App.5th at p. 240), *after* the Assembly had voted to amend the bill to remove the presumption, and *after* the Senate had concurred in the Assembly's amendments and ordered the approved legislation be sent to engrossing and enrolling. (<Https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB81>.) Accordingly, members of the Assembly had no knowledge of the letter, nor any opportunity to consider either the letter or the unstated intent of the author, at the time they voted to amend the legislation and approve the legislation as amended.

As this Court explained in *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699-700, when construing statutes, the courts will not consider the motives of individual lawmakers in passing legislation, including those of the author, because "no guarantee can issue that those who supported [her] proposal shared [her] view of its compass." The only time a legislator's statement of intent is entitled to consideration is "when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion." (*Id.* at p. 700; accord, *McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213,

241 ["where the author's statements are part of committee materials—and are therefore relayed not merely as personal views, but instead as part of the Legislature's consideration of the bill—they can serve as salient reflections of legislative purpose"].) Senator Skinner's comment in her letter regarding *Martin* is not reflected in any committee materials or legislative discussions. Her letter is therefore entitled to no consideration.[2]

Even if this Court takes judicial notice of Senator Skinner's letter, the letter is entitled to little or no weight in light of the relevant legislative history. (*Bouquet*, *supra*, 16 Cal.3d at p. 591 [noting that an individual legislator's letter merited less weight than committee reports on the bill].) As explained above, the language of section 1385, as enacted, replaced earlier proposed language that would have expressly created a rebuttable presumption in favor of dismissal. The Legislature's decision not to create a rebuttable presumption 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

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[2] Amici rely on *Anderson*, *supra*, 88 Cal.App.5th at page 241, footnote 9, in support of the argument that Senator Skinner's letter is relevant to the Legislature's intent in enacting Senate Bill No. 81. (ACB 18-19.) This reliance is misplaced. For the reasons noted above, the *Anderson* court erred in considering the Skinner letter as informative of legislative history. Notably, the court did not consider the full content of the letter. The court simply cited to the first paragraph of the letter, which reiterated the actual history of the legislation, as supportive of its statutory interpretation. (*Anderson*, *supra*, at pp. 240-241.) The court did not take judicial notice of Skinner's personal opinions regarding section 1385.

presumption. (See *Soto*, *supra*, 51 Cal.4th at p. 245; *Albillar*, *supra*, 51 Cal.4th at p. 57.)

Moreover, Senator Skinner's letter provides little guidance because it is inherently inconsistent. (See *California Teachers Assn.*, *supra*, 28 Cal.3d at p. 701 ["Even if we were to consider Senator Rodda's statement, it provides little guidance."].) On the one hand, the letter recognizes that Senate Bill No. 81 was amended to replace a rebuttable presumption and preserve the trial court's discretion. (Sen. Nancy Skinner, letter to Secretary of the Sen. (Sept. 10, 2021) 121 Sen. J. (2021-2022 Reg. Sess.) p. 2638.) On the other hand, the letter states that it was Senator Skinner's intent that the "great weight" standard be consistent with *Martin*, which amici equate to a presumption standard. (*Id.* at p. 2639; ACB 20-21.)[3] These two propositions cannot be reconciled. The Legislature could not have *sub silencio* intended to create a *Martin*-like *implied* presumption while simultaneously rejecting a version of the statute that set forth an *express* presumption. (*Soto, supra,* 51 Cal.4th at p. 245; see also opn. 14-16 [finding that *Martin*'s "especially onerous" construction of "great weight" did not apply to section 1385]; see generally *Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 366 ["We will not speculate that the Legislature meant something other than what it said, and rewrite [the]

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[3] As explained in the Answer Brief on the Merits, the construction of the "great weight" language in *Martin* addressed a fundamentally different issue from the one presented here. (See ABM 27-29.)

statute to posit an unexpressed intent." (Internal quotation marks omitted)].)

Amici attempt to overcome this contradiction by arguing that although Senator Skinner's letter does not support an "express presumption," it does support a "presumption-like burden." (ACB 20.) Amici fail to explain the purported distinction between an express presumption and a "presumptive-like burden," nor do they adequately explain how such a "presumption-like burden" would operate in the context of section 1385. Senator Skinner's letter therefore fails to support the conclusion that the "great weight" language in section 1385 creates a rebuttable presumption in favor of dismissing enhancements unless the trial court finds dismissal would endanger public safety.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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November 30, 2023

CERTIFICATE OF COMPLIANCE

I certify that the attached **Answer to the Amicus Curiae Brief** uses a 13 point Century Schoolbook font and contains 2,212 words.

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November 30, 2023

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

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

I declare:

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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

I also served the attached ANSWER TO AMICUS CURIAE BRIEF, 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 November 30, 2023, at Los Angeles, California.

Lici Garcia	*/s/ Lici Garcia*
Declarant	Signature

CGS:lxg
LA2023601296

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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