

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S272850

EMILY WHEELER,
Petitioner,

v.

APPELLATE DIVISION OF
THE LOS ANGELES
SUPERIOR COURT
Respondent.

(Court of Appeal, 2nd Dist.,
Div. 3, No. B310024)

(Super. Ct. No. 9CJ00315-
02)

**APPLICATION OF THE CALIFORNIA PUBLIC DEFENDERS
ASSOCIATION AND LOS ANGELES COUNTY PUBLIC
DEFENDER'S OFFICE TO APPEAR AS *AMICI CURIAE* (RULE
8.520(f)) AND BRIEF OF *AMICI CURIAE***

Los Angeles County Public Defender's Office
Ricardo D. Garcia, Public Defender
Albert J. Menaster, Head Deputy
Nick Stewart-Oaten (State Bar No. 244561) *
320 West Temple Street, Suite 590
Los Angeles, California 90012
Telephone No. (213) 974-3000
nstewart-oaten@pubdef.lacounty.gov

Attorneys for Petitioner

Table of Contents

Table of Authorities.....	3
Application of California Public Defenders Association and Law Offices of the Public Defender for the County of Los Angeles to Appear as <i>Amici Curiae</i> (Rule 8.520(f)).....	5
I. Application of CPDA to Appear as Amicus Curiae.....	5
II. Application of LACPD to Appear as Amicus Curiae.....	7
Brief of Amici Curiae.....	8
Issue Presented.....	8
Introduction.....	8
Points and Authorities.....	9
I. A Trial Court Can Consider a Defendant’s Lack of Criminal Intent or Knowledge When Exercising Its Discretion Pursuant to Section 1385.....	9
II. The Lower Courts Failed to Apply the Correct Standard of Review, Which Requires the Reviewing Court to Presume That the Trial Court Followed the Law, and Failed to Give Due Deference to the Trial Court’s Determination That Dismissal Was in the Interests of Justice.....	13
III. Reversal Was Improper, Because No Evidence Suggests That Respondent Court Would Have Reached a Different Conclusion If It Had Not Considered Petitioner’s Lack of Moral Culpability.....	16
Conclusion	18
Certificate of Compliance	19
Proof of Service.....	20

Table of Authorities

CASES

<i>Barnett v. Superior Court</i> (2010) 50 Cal.4th 890	6
<i>California v. Trombetta</i> (1984) 467 U.S. 479	7
<i>Chambers v. Superior Court</i> (2007) 42 Cal.4th 673	6
<i>Denham v. Superior Court</i> (1970) 2 Cal.3d 557	13
<i>Galindo v. Superior Court</i> (2010) 50 Cal.4th 1	6
<i>In re Julian R.</i> (2009) 47 Cal.4th 487	13
<i>Manduley v. Superior Court</i> (2002) 27 Cal.4th 537	6
<i>Monge v. California</i> (1998) 524 U.S. 721	7
<i>Morse v. Municipal Court</i> (1974) 13 Cal.3d 149	6
<i>People v. Albillar</i> (2010) 51 Cal.4th 47	6
<i>People v. Avalos</i> (1984) 37 Cal.3d 216	16
<i>People v. Bradley</i> (2012) 208 Cal.App.4th 64	13
<i>People v. Cluff</i> (2001) 87 Cal.App.4th 991	11
<i>People v. Fritz</i> (1985) 40 Cal.3d 227	10
<i>People v. Gaines</i> (2009) 46 Cal.4th 172	13
<i>People v. Hovarter</i> (2008) 44 Cal.4th 983	14
<i>People v. Lenix</i> (2008) 44 Cal.4th 602	6
<i>People v. Martin</i> (2005) 127 Cal.App.4th 970	13
<i>People v. Memro</i> (1995) 11 Cal.4th 786	13
<i>People v. Nelson</i> (2008) 43 Cal.4th 1242	6
<i>People v. Sanders</i> (2003) 31 Cal.4th 318	6
<i>People v. Stowell</i> (2003) 31 Cal.4th 1107	13
<i>People v. Superior Court (Alvarez)</i> (1997) 14 Cal.4th 968	14
<i>People v. Superior Court (Howard)</i> (1968) 69 Cal.2d 491	14
<i>People v. Thompson</i> (1994) 24 Cal.App.4th 299	13
<i>People v. Wheeler</i> (1998) 17 Cal.4th 148	12
<i>Stanton v. Superior Court</i> (1987) 193 Cal.App.3d 265	10
<i>Wheeler v. Appellate Division of the Superior Court of Los Angeles County</i> (2021) 72 Cal.App.5th 824	passim

STATUTES

Pen. Code § 995 10
Pen. Code § 1385 passim
Bus. & Prof. Code, § 6070 6

RULES

Cal. Rules of Court, Rule 4.421 11
Cal. Rules of Court, Rule 4.423 11
Cal. Rules of Court, Rule 8.520 5

**APPLICATION OF CALIFORNIA PUBLIC DEFENDERS
ASSOCIATION AND LAW OFFICES OF THE PUBLIC
DEFENDER FOR THE COUNTY OF LOS ANGELES TO
APPEAR AS *AMICI CURIAE* (RULE 8.520(f))**

TO THE HONORABLE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE
STATE OF CALIFORNIA:

The California Public Defenders Association (hereinafter “the CPDA”) and the Los Angeles County Public Defender (hereinafter “the LACPD”) apply under California Rules of Court, Rule 8.520, subdivision (f) for permission to appear as *amici curiae* in the case of *Emily Wheeler v. Appellate Division of the Los Angeles Superior Court*. This application summarizes the nature and history of your amici and our interest in the issues presented in this case and demonstrates that our proposed brief will assist the court in the analysis and consideration of the issues presented.

**I. APPLICATION OF CPDA TO APPEAR AS *AMICUS
CURIAE***

The California Public Defenders Association is the largest association of criminal defense attorneys and public defenders in the State of California. With a membership of more than 4,000 criminal defense attorneys and associated professionals, CPDA is an important voice of the criminal defense bar. CPDA has been a leader in continuing legal education for defense attorneys for a half century and is an approved provider of Mandatory Continuing

Legal Education, Criminal Law Specialization Education, and Appellate Law Specialization Education. The CPDA is one of only two organizations deemed by the Legislature to be an “automatically” approved legal education provider. (Bus. & Prof. Code, §6070, subd. (b).)

Courts have granted CPDA leave to appear as *amicus curiae* in nearly fifty California cases which culminated in published opinions. (See, e.g., *People v. Albillar* (2010) 51 Cal.4th 47 [sufficiency of the evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [pre-prelim discovery]; *People v. Lenix* (2008) 44 Cal.4th 602 [comparative juror analysis for first time on appeal], *People v. Nelson* (2008) 43 Cal.4th 1242 [DNA evidence in a cold-hit case]; *Chambers v. Superior Court* (2007) 42 Cal.4th 673 [*Pitchess* procedures]; *People v. Sanders* (2003) 31 Cal.4th 318 [search could not be a reasonable “parole search” without knowledge of the suspect's parole status]; *Manduley v. Superior Court* (2002) 27 Cal.4th 537 [no separation of powers violation by the direct filing of juvenile cases in the criminal court]; *Morse v. Municipal Court* (1974) 13 Cal.3d 149 [mandate issued to compel consideration of diversion].) CPDA has also served as *amicus curiae* in the United State Supreme Court in numerous cases. (See, e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be

expected to play a significant role in the suspect's defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

CPDA has both a general and specific interest in the subject matter of this litigation. We represent the vast majority of indigent individuals who receive the benefit of dismissal orders pursuant to Penal Code section 1385, and recognize that the broad judicial discretion permitted by this statute has played a critical role, particularly coming out of the COVID-19 pandemic, of permitting the expedient and just resolution of cases. While we freely concede that proof of criminal intent is not an element of every offense, we see no conflict between that fact and a judge's right to consider a defendant's actual *mens rea* when exercising its discretion under section 1385.

II. APPLICATION OF LACPD TO APPEAR AS AMICUS CURIAE

The Los Angeles County Public Defender's Office is the largest office of trial counsel for indigent criminal defendants in the United States. LACPD represents thousands of indigent clients charged with strict liability misdemeanor offenses every year, including the municipal code ordinance at issue here. LACDP is familiar with the briefing and issues presented in this case and, because the scope of a court's discretion to dismiss a strict liability

offense pursuant to Penal Code section 1385 is a question that impacts hundreds of our clients, has an ongoing interest in the proceedings herein.

BRIEF OF AMICI CURIAE

Issue Presented

1. Can a trial court dismiss a strict liability offense pursuant to Penal Code section 1385 based in part on a defendant's lack of knowledge concerning the offense?

Introduction

Petitioner, a wheelchair bound eighty-five year-old woman with no criminal record, was charged with a "strict liability" municipal code violation when, without her knowledge, her tenant used her rental property to start an unlicensed cannabis dispensary.

After hearing the facts and considering the arguments of both sides, the trial court exercised its discretion under Penal Code section 1385 to dismiss petitioner's case, citing four factors in its decision: (i) petitioner's age; (ii) petitioner's lack of record; (iii) the fact that petitioner had led an exemplary life; and (iv) the fact that it was undisputed that petitioner did not know that her tenant was

using her property to run a cannabis dispensary, licensed or not.¹

The appellate division of the Los Angeles Superior Court and a panel of the Second District Court of Appeal reversed, asserting that a trial court cannot consider a defendant's *mens rea* within the context of a section 1385 motion when the defendant is charged with a strict liability offense.

This Court has now granted review, in part to determine whether a court can consider the defendant's lack of criminal intent when determining whether to grant or deny a 1385 motion in the context of a strict liability offense.

Points and Authorities

I. A Trial Court Can Consider a Defendant's Lack of Criminal Intent or Knowledge When Exercising Its Discretion Pursuant to Section 1385

Appellant's claim that the trial court abused its discretion centers on the fact that petitioner was charged with a strict liability offense. Appellant asserts that when a statute does not require proof of a specific criminal intent, a court cannot consider the fact that the defendant did not know they were breaking the law or intend to break the law as one factor in favor of dismissal at a 1385

¹All future references are to the Penal Code, unless otherwise noted.

hearing. Because section 1385 contains no such restriction, appellant is mistaken.

Section 1385 authorizes dismissal even when a defendant has committed the charged offense. (§ 1385, subd. (a); *People v. Fritz* (1985) 40 Cal.3d 227, 230 [a court's discretion under section 1385 includes the power to dismiss regardless of whether the elements of an offense have been established by the evidence.].) As such, a 1385 determination is not governed by a determination as to whether the defendant *can* be charged with the offense, but whether, *despite* that fact, the case should be dismissed in the interests of justice.²

The question then, does not turn on whether criminal intent or knowledge is an *element* of the charged offense, but whether a court is permitted to consider whether the defendant intended to break the law when deciding whether to grant (or deny) a motion to dismiss. Section 1385 contains no language preventing a court

² If, for example, section 1385 dismissals were only available when the defendant has not violated the statute in question, section 1385 would be a nullity, because the defendant could seek dismissal on other grounds. (See, e.g., § 1004 [defendant may seek dismissal via demurrer]; § 991 [court must dismiss when there is no probable cause to believe that defendant has committed the charged offense]; § 995 [same]; *Stanton v. Superior Court* (1987) 193 Cal.App.3d 265, 270 [where legal bar to prosecution exists, defendant may seek dismissal via a nonstatutory motion].)

from doing so, and appellant identifies no precedent supporting its interpretation of section 1385. (§ 1385.)

In other contexts, at least, it is well-settled that a defendant's mental state and moral culpability are relevant factors for a trial court to consider when exercising discretion, including "whether the defendant was a passive participant [in the crime, or] mistakenly believed the conduct was legal," or had a mental condition that "significantly reduced culpability for the crime." (Cal. Rules of Court, rule 4.423, subd. (a)(1), (a)(7), (b)(2); see also *People v. Cluff* (2001) 87 Cal.App.4th 991, 1001-1002 [court may consider defendant's moral culpability when exercising its discretion].)

It is equally clear that when exercising discretion, a court may look with disfavor on evidence establishing that the defendant's mental or moral culpability was *higher* than that required for the charged offense. (See, e.g., Cal. Rules of Court, rule 4.421, subd. (a)(4), (a)(8) [a court may consider whether the defendant acted as a "leader" or whether the crime involved "planning, sophistication, or professionalism."].)

A rule prohibiting courts from considering a defendant's mental state at the time of the crime would also be absurd, because one factor that is indisputably relevant to a determination as to whether a dismissal is in the interests of justice is whether the defendant is likely to continue with the allegedly unlawful behavior—and a determination that the defendant's violation was a

product of ignorance rather than criminal intent certainly bears on such a finding. (§ 1385 [court is empowered to determine whether a dismissal is in the “interests of justice”]; *People v. Wheeler* (1998) 17 Cal.4th 148, 160 [court may properly consider defendant’s “character and prospects”].)

Here, the undisputed evidence at the 1385 hearing established that any violation of law committed by petitioner was a result of ignorance rather than intent. Petitioner did not know she had rented her property to a person who intended to use it to sell cannabis without a license. There is no evidence, in fact, that petitioner knew her tenant intended to sell cannabis *at all*. (Exhibit A, p. 20.)³ As such, although petitioner might technically be guilty of the charged offense, it appears indisputable that petitioner’s moral culpability (and the corresponding likelihood that petitioner will reoffend) is less than that of a person who violated the law intentionally, knowingly, or recklessly.

Because courts are authorized to consider a defendant’s mental state, moral culpability, and prospects when exercising their discretion, and section 1385 does not prohibit reliance on those factors, the trial court’s consideration of petitioner’s innocent mental state as one factor in its decision was well within its discretion.

³ All references to Exhibits refer to the Exhibits filed in the appellate division and Court of Appeal.

II. The Lower Courts Failed to Apply the Correct Standard of Review, Which Requires the Reviewing Court to Presume That the Trial Court Followed the Law, and Failed to Give Due Deference to the Trial Court’s Determination That Dismissal Was in the Interests of Justice

In its brief opinion upholding the reversal of the trial court’s dismissal of petitioner’s charge, the Second District panel endorsed the appellate division’s reasoning that “[f]inding that a person’s lack of knowledge called for the dismissal of offenses, when the offenses required no knowledge for conviction, in effect, was an improper dismissal based on the court’s disagreement with the law, or disapproval of the impact the provisions would have on the defendant.” (*Wheeler v. Appellate Division of the Superior Court of Los Angeles County* (2021) 72 Cal.App.5th 824, 842.)

Respectfully, because the trial court never stated or suggested that it was dismissing petitioner’s case because it “disagreed with the law,” and a reviewing court must presume that a trial judge has acted properly and adhered to legal standards, the Second District panel and the appellate division misapplied the standard of review, and therefore erred.

Pursuant to section 1385, a trial court may “in furtherance of justice, order an action be dismissed.” A ruling on a motion to dismiss under section 1385 is reviewed for abuse of discretion. (*People v. Memro* (1995) 11 Cal.4th 786, 835-836; overruled on other grounds in *People v. Gaines* (2009) 46 Cal.4th 172.) The burden is

on the party that opposed the dismissal to establish that abuse of discretion. (*People v. Thompson* (1994) 24 Cal.App.4th 299, 308; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 566; see also *People v. Bradley* (2012) 208 Cal.App.4th 64, 89 [appellant “bears a heavy burden” in showing abuse of discretion].)

It is a “cardinal principle of appellate review” that a lower court’s order is “*presumed correct.*” (*In re Julian R.* (2009) 47 Cal.4th 487, 498-499, emphasis in original.) Thus, a trial court is presumed to know and to have followed the law. (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114; *People v. Martin* (2005) 127 Cal.App.4th 970, 977.)

In the same vein, a court’s discretion to dismiss pursuant to section 1385 is “very broad.” (*People v. Superior Court (Howard)* (1968) 69 Cal.2d 491, 504.) Consequently, a “trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004.) Reversal is not permitted “merely because reasonable people might disagree” and the reviewing court “is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

Here, it is apparent that the reviewing courts simply substituted their “judgment for the judgment of the trial judge.” (*Hovarter* at p. 1004.) Neither the panel or the appellate division began by presuming that the trial judge followed the law (instead both presumed, without evidence, that the dismissal was based on the trial court’s disagreement with the law), and neither deferred to the trial court’s weighing of the factors in favor of dismissal, instead simply re-weighing those factors in order to reach their own, contrary conclusion. (See, e.g., *Wheeler* at p. 842 [panel reversed based on its own assessment of the “interests of society,” rather than finding that the trial court acted in an “arbitrary or capricious manner.”].)

Nor does the evidence support the reviewing court’s conclusion that the trial court acted improperly. In dismissing the single municipal code violation against petitioner, for example, the trial court did not say, suggest, or imply that it was dismissing the charge because it “disagreed” with the municipal code section in question. To the contrary, the trial court explained that it had considered the moving papers, petitioner’s age, her exemplary life, her lack of criminal record and her lack of *mens rea*, and on *that* basis was granting the dismissal. (Exh. B, p. 307.)

Tellingly, while granting petitioner’s motion to dismiss, the trial court *denied* the motion to dismiss as to the co-defendant, a person who *also* lacked *mens rea*, but to whom the other factors

(age, disability, lack of criminal record) did not appear to apply. (Exh. B, p. 309.)

Put more simply, appellant's claims notwithstanding, the record contains no evidence overcoming the required presumption that the trial court acted lawfully or suggesting that the court dismissed the case because it "disagreed" with the law, and instead establishes that the court considered each defendant on an individualized basis, exactly as required by section 1385.

Because the appellate division and the Court of Appeal failed to apply the required presumption or give due deference to the trial court's weighing of the facts in favor of dismissal, both courts erred.

III. Reversal Was Improper, Because No Evidence Establishes That Respondent Court Would Have Reached a Different Conclusion If It Had Not Considered Petitioner's Lack of Moral Culpability

Even if it were assumed that trial courts cannot consider a defendant's mental state or moral culpability as one of several factors when deciding a 1385 motion, the panel's reversal of the trial court's decision was still improper, because no evidence establishes that the trial court would have reached a different decision absent consideration of that factor.

A "trial court's ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its

discretion an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*Hovarter, supra*, 44 Cal.4th at p. 1004.) Further, when a trial court has exercised its discretion by relying on a number of factors, only one of which was improper, a reviewing court *cannot* reverse absent evidence that it is “reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Avalos* (1984) 37 Cal.3d 216, 233.)

The evidence establishes that the trial court expressly listed four reasons why it was dismissing petitioner’s case, citing petitioner’s age, her exemplary life, her lack of criminal record, and her lack of *mens rea*. The evidence also establishes that the trial court was aware of the very minor nature of the defendant’s alleged offense (a technical violation of a city ordinance regulating rental agreements) and petitioner’s physical disability. (See, OBM, p. 13 [petitioner appeared in the courtroom in her wheelchair].)

Of all these factors, appellant challenges only one, the trial court’s consideration of the defendant’s reduced moral culpability, as supposedly improper, and the Court of Appeal panel reversed on that basis. (Answer, p. 56; *Wheeler, supra*, 72 Cal.App.5th at p. 842.) No evidence, however, supports the conclusion that it was “reasonably probable” that the trial court would have reached a different decision if it had excluded consideration of petitioner’s

Certificate of Compliance

I certify that pursuant to the California Rules of Court Rules 8.520(c)(1), the attached PETITION FOR REVIEW in this action contains 3,909 words according to the word count of the computer program used to prepare the document.

DATED: January 30, 2023

By: /s/ _____
NICK STEWART-OATEN

Proof of Service

I declare under penalty of perjury that the following is true and correct:

At the time of service, I was at least 18 years of age and not a party to this legal action. My business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012. I served the foregoing petition for review in Case No. PA093150, and the attached appendix as follows:

By Truefiling

On January 30, 2023, I personally served copies of the documents identified above on the following recipient:

Attorney General State of California
300 South Spring Street
Los Angeles, California 90013
docketinglaawt@doj.ca.gov

By U.S. Mail

On January 30, 2023, pursuant to the California Rules of Court, rule 8.486, subdivision (e)(1), I placed a true copy of the petition identified above in a sealed envelope for collection and mailing following our ordinary business practices in the County of Los Angeles, California. I am familiar with this agency's practices for collecting and processing correspondence for mailing. On the

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **WHEELER v. APPELLATE DIVISION (PEOPLE)**

Case Number: **S272850**

Lower Court Case Number: **B310024**

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2. My email address used to e-serve: **nstewart-oaten@pubdef.lacounty.gov**
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Date

/s/Jennifer Martinez

Signature

STEWART-OATEN, NICK (244561)

Last Name, First Name (PNum)

Los Angeles Public Defender's Office

Law Firm