

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 ANSWER TO THE AMICUS CURIAE BRIEF

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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APPELLANT’S ANSWER TO THE AMICUS CURIAE BRIEF
ARGUMENT

I. THE LEGISLATURE DID NOT INTEND THAT PENAL CODE SECTION 1385, SUBDIVISION (C) WOULD CREATE A REBUTTABLE PRESUMPTION IN FAVOR OF DISMISSING ENHANCEMENTS.

Amici contend that the term “great weight” in section¹ 1385, subdivision (c) creates a rebuttable presumption in favor of dismissing enhancements. (ACB 10.) In *People v. Ortiz* (2023) 87 Cal.App.5th 1087, review granted April 12, 2023, S278894, the court remarked, “Had the Legislature intended to establish a rebuttable presumption ..., it could have approved the language of the earlier version of the bill. We are unable to ignore the fact that it did not.” (*Id.* at p. 1097.)

Amici argue that “the matter is not quite as simple as the *Ortiz* court would have it.” (ACB 15.) But it is; as amici acknowledge, “[t]he final amendment of the bill ... eliminated the express ‘rebuttable presumption’ language, substituting in the ‘great weight’ language now found in section 1385(c)(2).” (ACB 15.) The Legislature made its intent clear.

¹ All unspecified statutory references are to the Penal Code.

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.

Appellant agrees with amici that this court should follow Senator Skinner's letter. (ACB 18-21.) It states:

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 437 (1986). [¶] Thank you for this opportunity to clarify the intent of SB 81.

(Sen. Daily Journal, Sept. 10, 2021, pp. 2638-2639.) Courts of Appeal have relied on Senator Skinner's letter in at least three published decisions: *People v. Anderson* (2023) 88 Cal.App.5th 233, 240-241, review granted, April 19, 2023, S278786; *People v. Lipscomb* (2022) 87 Cal.App.5th 9, 19-20, review denied March 22, 2023, S278429; and *People v. Ponder* (2023) 96 Cal.App.5th 1042, 1051-1052, petition for review pending, petition filed December 4, 2023, S282925.

However, appellant departs with amici as to what *Martin* means for section 1385, subdivision (c)(2)'s "great weight" standard. Appellant agrees with *Ortiz* 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." (*People v. Ortiz, supra*, 87 Cal.App.5th 1087, 1098; accord *People v. Ponder, supra*, 96 Cal.App.5th 1042, 1051.) Although *Ortiz* does not cite *Martin*,

its “countervailing factors” language evokes *Martin*, which states that “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.” (*People v. Martin, supra*, 42 Cal.3d 437, 448, fn. omitted.)

In practice, applying *Martin*’s “great weight” standard to section 1385 should nearly always result in dismissal of the enhancement absent a finding that dismissal would endanger public safety. However, a court could still find that dismissal is not in furtherance of justice. This is what happened in *People v. Ponder, supra*, 96 Cal.App.5th 1042, 1050. Although the trial court did not determine whether dismissal of the enhancement would endanger public safety, the Court of Appeal “agree[d] 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.” (*Id.* at pp. 1050, 1052.) It explained:

The ultimate question before the trial court was whether it was in the furtherance of justice to dismiss the enhancement. [Citation.] Here, the record shows that trial court was aware of its discretion and the mitigating circumstances it was required to consider under section 1385(c)(2) as amended by S.B. 81. The court explained it had “given great wright to the findings that the [original] court made” regarding mitigating circumstances and gave “an enormous amount of thought over a number of months” about the appropriate sentence. It “thought about the equities,” “the mitigating evidence that was produced, what the meaning of that is,” along with the aggravating factors, and determined that “the appropriate amount of reduction in mitigation” was reducing the firearm enhancement from 25 years to life to 10 years. [¶] Clearly, the trial court considered all the mitigating

circumstances related to defendant and gave great thought to whether to dismiss the firearm enhancement. We see no abuse of discretion, and, indeed, defendant does not claim the trial court abused its discretion.

(*Id.* at pp. 1052-1053.) In reaching its decision, the *Ponder* court quoted *Ortiz*'s "countervailing factors" language. (*Id.* at p. 1051.)

"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." (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 not leave the meaning of section 1385, subdivision (c)(2)'s "great weight" standard for another day; it should follow Senator Skinner's letter and construe "great weight" to be consistent with *Martin*.

CONCLUSION

The Legislature did not intend that section 1385, subdivision (c) would create a rebuttable presumption in favor of dismissing enhancements. This court should construe section 1385, subdivision (c)(2)'s "great weight" standard to be consistent with *Martin*.

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 905 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 December 7, 2023.

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 **answer to the amicus curiae brief** 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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I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on December 7, 2023.

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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12/7/2023

Date

/s/Jason Szydlik

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