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SUPREME COURT
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**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

MISAEL VENCES MAYA,

Defendant and Appellant.

Case No. S255371

Deputy

Second Appellate District, Division Six, Case No. B290589
Ventura County Superior Court, Case No. 201031209
The Honorable Bruce Young, Judge

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ISSUE PRESENTED

“Does Penal Code section 1203.4a, subdivision (a), which sets forth a procedure to obtain the setting aside of a guilty verdict, authorize a court to consider an individual’s time spent in immigration custody, after judgment of conviction, as part of the determination whether that individual has lived an ‘honest and upright life[?]’” (OBM 5.)

INTRODUCTION

The answer to the issue presented is “yes.” Nothing in the text, structure or purpose of Penal Code section 1203.4a, subdivision (a) categorically forbids a trial court from considering actions and achievements while in custody—including in immigration custody—in evaluating whether an individual seeking the expungement of a misdemeanor conviction has led an “honest and upright life.”¹

But that construction does not establish that Maya was entitled to expungement of his conviction for possession of methamphetamine, as he contends. While a court is permitted to consider in-custody conduct, it must also find such conduct sufficient to establish an “honest and upright life.” As a prerequisite to expungement under subdivision (a), a petitioner “convicted of a misdemeanor and not granted probation” must establish to the satisfaction of the trial court that he or she has, since the pronouncement of judgment, both “obeyed the laws of the land,” and also “lived an honest and upright life.” In light of those dual requirements, an “honest and upright life” requires more than proof that a petitioner has avoided additional arrests or convictions. A petitioner must also affirmatively establish—as a petitioner under the felony expungement provision

¹ All references are to the Penal Code unless otherwise stated.

containing similar language must show—that he or she has been rehabilitated.

In determining whether a petitioner has been rehabilitated, the trial court may consider a variety of factors, including the nature and severity of the conviction; a petitioner’s criminal record; efforts at self-improvement—like education courses, or participation in mental health and substance abuse treatment programs; the presence or absence of sincere expressions of remorse; and the court’s assessment about whether the petitioner’s circumstances allow him or her to show that he or she has forsworn the conduct that led to the conviction. Given that fact-bound analysis, a trial court may demand more exacting evidence of rehabilitation when confronted with a petitioner who has a long record, or has committed serious offenses that put others at risk.

While a trial court may consider a petitioner’s in-custody behavior as part of its evaluation, some petitioners—like Maya, who had sustained seven convictions for driving under the influence in just six years—may find it difficult to prove rehabilitation only through actions while in custody. The encumbrances of detention may limit the range of evidence a petitioner can present to prove rehabilitation by living an “honest and upright life,” and in the circumstances of a particular case, a trial court may properly demand more. The trial judge here—who had also imposed the prison sentence and denied probation—observed that Maya’s personal challenge involved his substance abuse and being “out on the roads driving while impaired.” (RT 52.) The court reasonably was concerned that it had very little evidence before it that Maya had put that long history and related dangerous behavior behind him. (See RT 52 [noting that “clearly he’s not going to be doing that [driving while impaired] in prison”].) Under these circumstances, the trial court did not abuse its discretion in finding that

Maya had failed to meet his burden to demonstrate that he had been rehabilitated, as shown by living an “honest and upright life.”

The trial court’s order denying expungement relief under section 1203.4a, subdivision (a) should be affirmed.

STATEMENT OF THE CASE

A. Maya’s Prior Convictions, Sentence and Custody, and Proposition 47 Relief

In May 2010, a California Highway Patrol officer observed a car weaving in and out of traffic as it traveled along the Highway 101.² (Prob. Rep. 2.) Officers stopped the car and smelled alcohol. (*Ibid.*) The driver, Misael Vences Maya, showed officers a license that identified him as “Daniel Maya Veces.” (*Ibid.*) Officers asked Maya to perform a field sobriety test; he performed “poorly.” (*Ibid.*) A subsequent breath test revealed a blood alcohol content of .16%. (*Id.* at 3.) During a search of Maya, officers also discovered a baggie containing 0.05 grams of methamphetamine. (*Id.* at 2.) After Maya’s arrest, officers confirmed his true identity through his fingerprints. (*Id.* at 3.)

In a six-count felony complaint, the People charged Maya with: various drunk driving offenses in violation of Vehicle Code sections 23550-23152; transporting methamphetamine in violation of Health & Safety Code section 11352(a); giving false information to a police officer, in

² The following facts come from Maya’s 2011 “Report of Probation Officer” prepared in anticipation of sentencing. The People have moved for judicial notice of the report (or, in the alternative, to augment the record), which was not included in the Clerk’s Transcript. The People have also moved to transmit the confidential report under California Rules of Court, rules 8.45(c)(1)(C) and 8.45(d)(5). The report is relevant because the same judge entered the judgment of conviction in 2011, and considered Maya’s request for expungement of that conviction in 2018. The report is cited as “Prob. Rep.” in this brief. (See Advisory Com. com., Cal. Rules of Court, rule 8.47.)

violation of Penal Code section 148.9(a); and driving with a suspended license. (CT 4-10.) The People sought a number of enhancements because, among other things, Maya had committed the offense while on bail for a 2009 drunk driving offense. (CT 4-5.) Maya was “on the eve of trial” for that offense, which involved a blood alcohol content of 0.19%, when he was arrested here. (RT 25; Prob. Rep. 9.) Indeed, Maya’s record for drunk driving offenses dated back to February 2004. (Prob. Rep. 8-10.) By the time of his arrest in 2010, Maya had seven prior convictions for drunk driving, with one resulting in a prison term of two years.³ (*Ibid.*)

Maya pled guilty to Count 1, the felony drunk driving offense with priors, and to amended Count 5, felony possession of methamphetamine, in violation of Health and Safety Code section 11377. (CT 11-27; RT 13.) In his written guilty plea, Maya agreed that he “did what is alleged in the counts.” (CT 12.) Before sentencing, however, Maya claimed that the breathalyzer was not “calibrated” and did not properly measure his intoxication level. (Prob. Rep. 3.) The drugs, Maya claimed, “could have been flour.” (*Ibid.*) He nonetheless explained that he would proceed to sentencing to put the “whole ordeal” behind him. (*Ibid.*) Maya requested immediate release. (*Ibid.*)

At sentencing, Maya’s attorney acknowledged that Maya’s “record is significant,” but still asked for lenience so Maya could “begin the rehabilitation of his life.” (RT 25.) The prosecutor recommended a high-end term, pointing to Maya’s “seven DUI’s in the roughly two and a half years he’s been out of custody.” (*Id.*) The trial court (the Honorable Bruce Young) denied probation and sentenced Maya to four years on the DUI offense, followed by eight months for the felony drug-possession

³ Maya sustained two of those convictions at the same time, based on separate incidents in October 2006. (Prob. Rep. 9.)

conviction, totaling 56 months. (RT 29.) The court also found that Maya had a “history of alcohol abuse” within the meaning of section 1203.096, and recommended that Maya “participate in a counseling or education program having a substance abuse component while imprisoned.” (§ 1203.096; see also RT 28; CT 36.)

The trial court entered judgment on July 7, 2011, and Maya went into the custody of the California Department of Corrections and Rehabilitation (CDCR). (CT 33-37, 51.) While in state custody, federal authorities initiated immigration proceedings against Maya, who had been a lawful permanent resident since 2001. (CT 67-69.) Immigration authorities alleged that Maya was deportable because he had been convicted of a controlled substance offense: the felony Health and Safety Code section 11377 conviction involving methamphetamine. (CT 67, 69.)

Maya was released from state custody on December 26, 2012, and detained by immigration officials within a “matter of days.” (RT 53; CT 51.) Maya remained in immigration custody from December 2012 through at least May 2018. (CT 66.) While Maya was in immigration custody, in November 2014, voters enacted Proposition 47, the Safe Neighborhoods and Schools Act. (*People v. Morales* (2016) 63 Cal.4th 399, 404.) Proposition 47 reduced some drug possession offenses from felonies to misdemeanors and provided a mechanism to petition a trial court to designate a qualifying felony conviction as a misdemeanor. (See *Harris v. Superior Court* (2016) 1 Cal.5th 984, 988; § 1170.18, subd. (f).) Consistent with that process, Maya successfully petitioned to have his felony conviction on Count 5 for possessing methamphetamine reduced to a misdemeanor in October 2015. (CT 39.)

B. Maya's Petition for Expungement of His Methamphetamine Conviction

Once the methamphetamine possession conviction was reclassified a misdemeanor, Maya attempted to expunge it.⁴ He first filed a petition in December 2015, seeking expungement under section 1203.4, which applies only to petitioners sentenced to probation.⁵ (RT 32-34; see also CT 46.) The assigned judge summarily denied the petition, determining that Maya was not eligible under this provision because he had not been sentenced to probation, and had instead been sentenced to prison.⁶ (RT 33.)

Maya renewed his expungement request in April 2018, this time invoking section 1203.4a.⁷ (RT 35-41.) This provision contains two routes for expungement for a petitioner convicted of a misdemeanor and not granted probation. Relief under section 1203.4a, subdivision (a) may be available “at any time after the lapse of one year from the date of pronouncement of judgment, if [the petitioner] has fully complied with and performed the sentence of the court, [and] is not then serving a sentence for any offense and is not under charge of commission of any crime[.]” (§ 1203.4a, subd. (a).) To obtain relief under subdivision (a), the petitioner

⁴ In some limited circumstances, expungements under state rehabilitative statutes may allow an individual within the Ninth Circuit to avoid removal. (See *infra*, p. 31.)

⁵ The Penal Code's three separate expungement schemes are described below. (See *infra*, pp. 23-31.)

⁶ The 2015 petition is not in the record as part of the Clerk's Transcript. The People were not able to locate it in the Superior Court's files.

⁷ This 2018 petition and supporting declaration are not in the record as part of the Clerk's Transcript. (See RT 37 [reference to both documents].) The People were not able to locate either in the Superior Court's files.

must establish that he or she “has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land[.]” (*Ibid.*) If that showing is made, “the court shall set aside the verdict of guilty[.]” or permit the defendant to withdraw a guilty plea, and “dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense[.]” with certain exceptions.⁸ (*Ibid.*)

Section 1203.4a, subdivision (b) provides another avenue for expungement for a petitioner convicted of a misdemeanor and not granted probation who “does not satisfy all the requirements of subdivision (a)[.]” As with subdivision (a), relief may be available at any time after the lapse of one year from the date of pronouncement of judgment, if the petitioner has fully complied with and performed the sentence of the court, and is not then serving a sentence for any offense and is not under charge of commission of any crime. (§ 1203.4a, subd. (b).) For such a petitioner, “a court, in its discretion and in the interests of justice, may grant the relief available pursuant to subdivision (a)[.]” (*Ibid.*)

After Maya filed his 2018 petition, a probation officer submitted a report to the trial court to aid in its assessment of Maya’s request. (CT 51-54.) The caption on the report erroneously stated that Maya’s petition was a “Request To Terminate Probation, Withdraw Plea and Declare Offense Misdemeanor” (CT 51), and the report’s analysis and recommendation drew from the requirements of section 1203.4, not section 1203.4a. (CT 52-53.) For example, the officer reported that because Maya “was never placed on probation, and instead, committed to State Prison, relief under this Section should not be granted.” (CT 52.) The officer also noted

⁸ As explained further below, expungement under section 1203.4a, subdivision (a) does not relieve a petitioner from all consequences of a conviction. (See *infra*, p. 31.)

that Maya had completed his sentence, “obeyed all laws,” and “not received any additional arrests.” (*Ibid.*) Still, the officer concluded that there was “no demonstrated, or measurable level of compliance in the community, and there has been no way to evaluate his ability to obey all laws.” (*Ibid.*) The officer also noted that Maya had “six AKA’s, three different social security numbers, and three different dates of birth, all as a likely means to defeat law enforcement efforts and to circumvent detection of his true identity.” (*Ibid.*) The officer ended his report by checking the box recommending “[t]hat relief not be granted under Section 1203.4 of the Penal Code.” (CT 53.)

The petition was assigned to Judge Young, who had sentenced Maya in 2011. At the hearing, Maya’s attorney argued for expungement under both subdivisions (a) and (b) of section 1203.4a. (RT 36, 40, 41.)⁹ He began by objecting that the probation report “was prepared for 1203.4 expungement not a [1203.4a].”¹⁰ (RT 36.) Still, Maya’s attorney argued, there is “sufficient evidence [in the report] to show that he is entitled to an expungement under [section 1203.4a].” (RT 36-37.) He noted that the report stated that Maya had “obeyed all laws[.]” (RT 36.) He also observed that there was “nothing in th[e] probation report that indicates that [Maya] has not lived an honest and upright life during that year following the pronouncement of judgment.”¹¹ (RT 37.) In addition, Maya’s attorney

⁹ The transcript at the cited pages refers to section “1203.4(a).” The context of the discussion and Maya’s petition make evident that Maya’s attorney was referring to section 1203.4a.

¹⁰ The transcript repeatedly cites to section “1203.43,” as well. (See, e.g., RT 37, 49.) This is error. Section 1203.43 relates to deferred entry of judgment. The context makes clear that the citation in the record is a typographical error, and that the correct citation is to section 1203.4a.

¹¹ The attorney focused his arguments on Maya’s conduct for the year after judgment, arguing that the court could consider only the one-year

pointed to Maya's declaration as further evidence that that he had "been taking steps to live an[] honest and upright life," though he had been in custody.¹² (*Ibid.*) "He's taken AA classes. He's participated in the fire camp. He has no issues whatsoever in any form of custody whether it's federal or immigration or in state custody." (*Ibid.*) "He's taken affirmative steps to turn his life around" and "shown that he has lived an honest and upright life." (RT 40.) Maya's attorney also argued for expungement under subdivision (b) in the interests of justice, because Maya had "been detained for essentially eight years." (*Ibid.*) "I don't think the state of California would contemplate such a heavy sentence and such a heavy burden imposed on a person who has fully gone and fulfilled every commitment that he's had to the state of California." (*Ibid.*)

The People opposed. The prosecutor initially focused on Maya's first year after judgment, observing that Maya had been in custody at the CDCR until June 2012. (RT 38.) "Of course he's had an upstanding life because he's been a prisoner in state custody." (*Ibid.*) The prosecutor then turned to what he called the "global issue": "I don't know any other situation that demonstrates a risk to society and a danger to society. Eight DUIs in a matter of three years."¹³ (RT 38.) The prosecutor further observed that

period after entry of judgment—from "June 2011 to 2012"—in determining whether Maya was entitled to expungement under subdivision (a). (RT 36.) Maya has since abandoned that claim. Indeed, the issue Maya presents—whether time in immigration custody may be considered in a section 1203.4a, subdivision (a) analysis—necessarily presumes that courts may look beyond the one-year period after judgment, since Maya did not enter immigration custody until almost one and a half years after judgment. (CT 51.)

¹² This declaration is not part of the Clerk's Transcript. The People were not able to locate the declaration or the accompanying petition in a search of the Superior Court's files.

¹³ The eight convictions occurred between 2004 and 2010. (Prob. Rep. 8-10.)

“since [Maya’s] release [from] custody, he was not being supervised.” (RT 39.) “He’s never been supervised ... because he went directly into federal custody.” (*Ibid.*) In the prosecutor’s view, “there’s been no period even to evaluate. And that’s given his own situation. He put himself in the situation by getting eight DUIs in a matter of three years and doing a four-year prison commitment on the last DUI.” (*Ibid.*) “I don’t think he’s entitled to it. And I don’t think the Court should use its discretion to allow that or expunge this.” (RT 38.)

The trial court denied the expungement request “on all grounds.” (RT 41.) The court’s explanation in full was as follows: “I’ve heard the argument of counsel. You made your record. I disagree. I think the logic is flawed. Being in custody for substantial periods of time is calling that an honest and upright life. I disagree.” (*Ibid.*)

About one month later, Maya filed a motion for reconsideration (CT 44-58) arguing that expungement was warranted under section 1203.4a, subdivision (a) because he had “lived an honest and upright life for one year after pronouncement of judgment in 2011.” (CT 48.) Maya pointed to the probation officer’s assessment that Maya had “obeyed all laws,” “completed required jail conditions,” and “not received any new arrests,” and argued that he was “entitled to relief, as a matter of law,” because he had not “reoffended or in any way demonstrated negative conduct since pronouncement of judgment.” (*Ibid.*) According to Maya’s counsel,

Given the clear record, based on the probation department’s analysis, that the Petitioner had not reoffended or in any way demonstrated negative conduct since the pronouncement of judgment, it is clear that the Petitioner is entitled to relief, as a matter of law. Again, nothing in the probation department’s analysis stated or demonstrated that he broke a law or failed to live an honest and upright life. Consequently, relief was mandatory.

(Ibid.)

The trial court held a second hearing. (RT 42-53.) Maya's attorney expressly abandoned any request for expungement in the interests of justice under subdivision (b). (RT 49.) He argued only that relief was "mandatory" under section 1203.4a, subdivision (a). (RT 46.) He noted first that Maya had obeyed all laws because he had no "arrests" the "year after conviction[.]" (RT 45.) Second, he noted that Maya "completed all required jail conditions" and argued that Maya therefore had "lived an honest and upright life." (RT 45-46.) Maya's attorney contended that the absence of convictions in custody was significant because it was "very easy to pick up a crime in custody. It's very easy to get a write-up or a shot in custody because you have less liberty than you would when you're outside free." (RT 49.) "For example, if I don't want to wake up until 8:00, that's my prerogative. If I'm in jail, that may not be the case. So I think that he has actually lived a more stringent year than he would be if he was out."

(Ibid.)

The prosecutor opposed, arguing that Maya was not entitled to relief under subdivision (a) simply because Maya did not "pick up any new crimes while incarcerated" at the state prison. (RT 47.) And he reiterated that Maya's history was "riddled with deception" about his identity, so relief under subdivision (b) in the interests of justice was also unwarranted. (RT 47-48.)

The trial court denied the motion for reconsideration. At points in the transcript, the court appeared to rely on section 1203.4—the provision providing expungement relief for probationers. (RT 49.) For example, the court observed that if Maya had been "on probation, successfully completed it with no violations and released and that time elapses, he's entitled to it as a right. I'm not quarreling with those principles. Those are not present in this case." (RT 50.) The trial court then observed that relief

was available only “under the discretion area,” as it would be for probationers who had not successfully completed probation under section 1203.4. (RT 51.)

Nonetheless, the court assessed whether Maya had established that he had lived an “honest and upright life,” a phrase that appears in section 1203.4a, subdivision (a), but not in section 1203.4. (RT 52-53.) In that analysis, the trial court considered *People v. Chandlee* (1979) 90 Cal.App.3d Supp. 13, which examined the difference between expungement relief in sections 1203.4 and 1203.4a. (RT 50.)

In the trial court’s view, Maya’s “arguments about behaving one’s self in custody, whether it be under local custody or prison, sets the concept [of living an “honest and upright life”] on its ear[.]” (RT 52) “[T]his was [Maya’s] sixth driving-under-the-influence conviction dating back to 2004. So the concerning conduct of supervision would be someone out on the roads driving while impaired and clearly he’s not going to be doing that in prison.” (*Ibid.*) The court noted that Maya had never been out of custody, so “[t]here’s been no opportunity by the Court or probation or parole officials to determine whether he leads a law-abiding life when out of custody[.]” (RT 53.) The court observed that although an “argument might have been able to be made if [Maya] was on” some form of supervision, here, Maya’s community supervision “lasted for a matter of days before ICE picked him up[.]” (*Ibid.*) The court concluded that it was “satisfied in reviewing all these facts and circumstances” that in “the Court’s discretion ... relief should be denied.” (RT 52-53.)

C. Decision on Appeal

Maya appealed the denial of expungement relief, and the Court of Appeal affirmed in a published opinion. (*People v. Maya* (2019) 33 Cal.App.5th 266.)

The majority held that the trial court had not abused its discretion in concluding that Maya “had 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.) The court observed that mere “[c]ompliance with prison regulations in an institutional setting does not satisfy the requirement of an honest and upright life.” (*Ibid.*) That is because 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.” (*Ibid.*) The court held that “confinement *necessarily precludes* evidence of inmate behavior in the face of outside temptation.” (*Ibid.*, italics added.) Accordingly, the court held that it was not error for the trial court to conclude that it “could not evaluate whether Maya had lived an honest and upright life since the pronouncement of judgment because he has been in custody continuously since 2011.”¹⁴ (*Id.* at p. 271.)

The majority also rejected Maya’s argument that the trial court erroneously applied the requirements of section 1203.4 rather than section 1203.4a. It held that “[a] fair reading of the court’s statements in context indicates that it could not evaluate whether Maya had lived an honest and upright life since the pronouncement of judgment because he

¹⁴ Before the Court of Appeal, the People argued that the trial court “could not consider [] behavior while in custody to determine whether [Maya] has lived an honest and upright life since judgment was pronounced.” (See Resp. Br. 14.) As explained further below, the People now agree that the statute does not *categorically* forbid the consideration of in-custody behavior in the “honest and upright life” analysis. (*Infra*, pp. 39-41.) But, as the People argued in the alternative before the Court of Appeal (and as the prosecutor explained before the trial court), “the evidence included in the record ... does not demonstrate that appellant lived an honest and upright life.” (Resp. Br. 18-19.) That basis for affirming the judgment is discussed below. (*Infra*, pp. 41-50.)

has been in custody continuously since 2011.” (*People v. Maya, supra*, 33 Cal.App.5th at p. 271.) And it reasoned that “[w]e presume that the court knows and understands the law and applies it correctly.” (*Ibid.*) Maya has not pursued that claim of error before this Court.

The dissent asserted that section 1203.4a “requires only that the misdemeanor comply with the law for one year following conviction.” (*People v. Maya, supra*, 33 Cal.App.5th at p. 272 (dis. opn. of Tangeman, J.)) The dissent reasoned that section 1203.4a, subdivision (a) should permit a trial court to consider “time spent in custody,” and would have “reverse[d] and remand[ed] for an evidentiary hearing on whether Maya conformed to the laws of the land for one year following the pronouncement of judgment.”¹⁵ (*Id.* at p. 273.)

This Court granted Maya’s timely petition for review, which presents the single issue of whether section 1203.4a, subdivision (a), authorizes a court to consider an individual’s time spent in immigration custody as part of the determination whether that individual has lived an “honest and upright life.”

LEGAL BACKGROUND

The Penal Code contains three related provisions that provide an opportunity to seek relief from some of the disabilities that stem from a criminal conviction. Section 1203.4 allows petitioners sentenced to probation for misdemeanor or felony offenses to set aside a conviction and obtain the dismissal of a charging instrument after successful completion of probation. Sections 4852.01, et seq. set out a mechanism for rehabilitated felons to obtain certificates of rehabilitation, which carry their own benefits

¹⁵ As noted above, Maya no longer contends that a court is limited to considering only a one-year period after judgment in deciding whether to expunge.

and can also be forwarded to the Governor as part of a pardon application. To obtain a certificate of rehabilitation, petitioners must establish, among other eligibility requirements, that they have lived an “honest and upright life” for the statutorily defined period of rehabilitation. Section 1203.4a (the provision at issue here) allows a trial court to set aside a misdemeanor conviction for petitioners who were not sentenced to probation if they can establish—tracking the language of one of the requirements of section 4852.05—that they have lived an “honest and upright life” since the pronouncement of judgment.

These provisions are often called “expungement” statutes because they release petitioners from “most penalties and disabilities stemming from the conviction.” (*People v. Tidwell* (2016) 246 Cal.App.4th 212, 217; see generally 3 Witkin, Cal. Crim. Law 4th Punishment (2019), § 719.) Collectively, these provisions provide context for the statutory interpretation question presented here and are described below.

A. Expungement for Probationers: Section 1203.4

At the beginning of the last century, the California Legislature first added an expungement provision to the State’s codes.¹⁶ Section 1203(5) allowed petitioners who had successfully completed probation to ask a trial court to set aside their felony or misdemeanor convictions. (Stats. 1909, ch. 232, p. 357, § 1.) The statute provided that “[e]very defendant who has fulfilled the conditions of probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time prior to the expiration of the maximum period of punishment for the offense to which he has been convicted” be

¹⁶ The Governor’s pardon power, in contrast, was first set out in the 1849 California Constitution. (*People v. Ansell* (2001) 25 Cal.4th 868, 874, n. 10.)

permitted to set aside his conviction and thereafter “be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted.” (*Ibid.*) That expungement provision was viewed as “inducement” to “secure law compliance” during the period of probation. (*People v. Johnson* (1955) 134 Cal.App.2d 140, 143.) “Removal of the blemish of a criminal record is the reward held out” for successfully completing probation; “[t]he purpose and hope are ... that through this act of clemency, the probationer may become reinstated as a law-abiding member of society.” (*Ibid.*)

Under section 1203(5), the law did not require “positive proof of total and permanent reformation or rehabilitation as a condition to surrender of the right to impose judgment and sentence[.]” (*People v. Johnson, supra*, 134 Cal.App.2d at p. 143.) Instead, it required only evidence that the petitioner completed his term of probation. “The theory seems to be” that completing “the terms of probation ... would support a hope, at least, that reformation had been accomplished[.]” so any additional proof of rehabilitation was unnecessary. (*Id.* at pp. 143-144)

Section 1203(5) was later moved to Penal Code section 1203.4. (Stats. 1935, c. 604, p. 1709, § 5.) Today, it allows a petitioner who has “fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation,” to move to set aside his conviction, so long as he or she “is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense[.]” (§ 1203.4, subd. (a)(1).) The statute requires expungement “where a defendant has performed the requirements

laid down in terms of probation[.]”¹⁷ (*People v. Bradley* (1967) 248 Cal.App.2d 887, 889 [internal citations omitted].)

Where the terms of probation are satisfied, a court has “no discretion but to carry out its part of the bargain”; a court cannot deny expungement under this provision “even though it might appear at the time of application” for expungement “that complete and permanent reformation or rehabilitation has not been accomplished.” (*People v. Bradley, supra*, 248 Cal.App.2d at p. 889.) Misconduct after the successful completion of probation is therefore no bar to expungement relief, as long as the petitioner is not in custody or facing charges at the time of the request. (*Ibid.*)

The statute also contains a discretionary expungement provision, added in 1971. (Stats. 1971, ch. 333, p. 667, § 1.) It allows a court to set aside a qualifying conviction “in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section[.]” (§ 1203.4, subd. (a)(1).) This provision gives “trial courts the power to set aside a conviction after

¹⁷ For misdemeanor offenses, courts are generally authorized to impose a term of probation of up to three years (§ 1203a), and are vested with broad discretion to impose any condition that is “reasonably related” to the crime of conviction and that can aid the defendant to “avoid future criminality.” (*People v. Moran* (2016) 1 Cal.5th 398, 405.) Typical terms of probation may include, for example, curfews and limitations on travel (*In re Michael D.* (1989) 214 Cal.App.3d 1610, 1617); physical and electronic search conditions (*People v. Bravo* (1987) 43 Cal.3d 600, 605); *People v. Sandee* (2017) 15 Cal.App.5th 294, 301); education requirements (*In re I.V.* (2017) 11 Cal.App.5th 249, 257-258); drug and alcohol testing (*People v. Balestra* (1999) 76 Cal.App.4th 57, 68); substance abuse treatment (*People v. Guzman* (2003) 109 Cal.App.4th 341, 349); restitution to any victim (*People v. Ayub* (1988) 202 Cal.App.3d 901, 905); and, more generally, compliance with all laws. (See generally Levenson & Ricciardulli, *Crim. Practice Guide: Conditions of Probation—General Conditions* (The Rutter Group 2019) § 25:19; *id.*, *Conditions of Probation—Constitutional Limitations* § 25:20.)

termination of probation *whenever* the circumstances warrant[] it.” (*People v. McLernon* (2009) 174 Cal.App.4th 569, 576, italics in original.) Under this discretionary provision, the “trial court may consider any relevant information, including the defendant’s post-probation conduct[,]” in determining whether to grant expungement relief. (*Id.* at p. 577.)

While relief under section 1203.4 relieves an individual of the “penalties and disabilities resulting from the offense of which he or she has been convicted,” the conviction is not rendered a legal nullity. (§ 1203.4, subd. (a)(1); see generally 3 Witkin, Cal. Crim. Law 4th Punishment (2019), § 719.) For example, the records from the conviction are not sealed. (*People v. Sharman* (1971) 17 Cal.App.3d 550, 552-553.) And the expunged conviction may still be proven as a prior conviction in a subsequent prosecution (*People v. Walters* (1961) 190 Cal.App.2d 98, 100); be used to impeach the petitioner as a witness (*People v. James* (1940) 40 Cal.App.2d 740, 747-748); require disclosure in professional licensing or public office applications (§ 1203.4, subd. (a)(1)); and impose restrictions relating to firearms (§ 1203.4, subd. (a)(2).)

**B. Certificates of Rehabilitation for Felons:
Sections 4852.01, et seq.**

During World War II, a surge in demand for labor and military recruitment led to a “deluge[]” of pardon applications from ex-felons who were barred from serving in the military or working in defense-related industries because of their prior convictions. (*People v. Chatman* (2018) 4 Cal.5th 277, 285.) In response, the Legislature in 1943 passed an “urgency measure” that allowed superior courts to “investigate and recommend pardon applicants” to the Governor, through a “certificate of rehabilitation” scheme. (*People v. Ansell* (2001) 25 Cal.4th 868, 874-75; see also Stats. 1943, ch. 400, p. 1922, § 1.) The certificate of rehabilitation eliminates some of the disabilities of a felony conviction—for example,

making some professional licenses available—and it further serves as an application for a pardon from the Governor. (*People v. Ansell, supra*, 25 Cal.4th at p. 877 & n.17; § 4852.16)

Among other things, a petitioner seeking a certificate of rehabilitation must establish that he or she has lived “an honest and upright life,” has conducted “himself or herself with sobriety and industry,” has exhibited “a good moral character” and “conform[ed] to and obey[ed] the laws of the land.” (§ 4852.05.) The petitioner must file a “declaration of rehabilitation” with the superior court, demonstrating his or her “honest and upright” living for a period of rehabilitation of no fewer than five years from discharge from custody. (§§ 4852.03, 4852.06). After considering the petition and any other testimony it deems necessary, the superior court may issue a certificate of rehabilitation if it finds that the petitioner “has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship[.]” (§ 4852.13.) The decision whether to issue a certificate of rehabilitation rests within the discretion of the trial court. (*People v. Chatman, supra*, 4 Cal.5th at p. 286.)

The “standards for determining whether rehabilitation has occurred are high.” (*People v. Ansell, supra*, 25 Cal.4th at p. 887.) “The hurdles erected by the Legislature to obtain a certificate of rehabilitation are not intended to be easily surmounted.” (*People v. Shepard* (2015) 239 Cal.App.4th 786, 795 [quoting *People v. Blocker* (2010) 190 Cal.App.4th 438, 445].) “The trial courts are entrusted with the responsibility, in the exercise of sound discretion, to ensure that the strict statutory standards for rehabilitation are maintained.” (*People v. Shepard, supra*, 239 Cal.App.4th at p. 795.) “There is no circumstance under which the statutory scheme

requires or guarantees issuance of a certificate of rehabilitation by the superior court.”¹⁸ (*People v. Ansell, supra*, 25 Cal.4th at pp. 887-888.)

C. Expungement for Misdemeanants Not Sentenced to Probation: Section 1203.4a

For a period of time, there was gap in the conviction mitigation schemes—specifically, there was no parallel expungement process available to petitioners convicted of misdemeanors and not granted probation, but instead sentenced to county jail or subject to a fine. The Legislature remedied that gap in 1963 by passing Assembly Bill 2242.

The first proposed version of Assembly Bill 2242 would have allowed a petitioner—“at any time after the lapse of one year from the date of the conviction”—to withdraw a guilty plea or have a verdict set aside and the accusatory pleading dismissed, provided the petitioner met two conditions. (Assem. Bill No. 2422 at p. 2.)¹⁹ First, the petitioner could “not then” be “serving a sentence for any offense” or “under charge of commission of any crime.” (*Ibid.*) Second, the petitioner had to establish that he or she had not “since such conviction, been convicted of any crime other than an offense relating to stopping, standing, or parking of a motor vehicle[.]” (*Ibid.*)

An amendment to the proposed bill substantially changed the second requirement. Instead of proof only of a crime-free period, the Legislature

¹⁸ After the Legislature passed the 2011 Realignment Legislation, the Legislature also added sections 1203.41 and 1203.42, which allow a court in its discretion and in the interests of justice to provide expungement relief to defendants sentenced to jail for felonies.

¹⁹ The People have concurrently filed a Motion for Judicial Notice of the original Assembly Bill language and the amended version that ultimately became section 1203.4a. The versions of the bill are cited in this brief as “Assem. Bill No. 2422,” and cited page numbers correspond to the Bates numbering for the exhibits attached to the Motion for Judicial Notice.

required proof that the petitioner, “since such pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land[,]” tracking two of the conditions required for a rehabilitation certificate under section 4852.05. (Assem. Bill No. 2422 at p. 4.)

Although the amended provision provided that relief “shall” be granted if those conditions were met, the requirement of an “honest and upright life”—as the State Bar noted shortly after passage—still “establishes a standard of behavior and gives the court some discretion in granting withdrawal of the conviction.” (Note, § 1203.4a (new): *Rehabilitation of Misdemeanants* (1963) 38 J. of the State Bar of Cal. 753-754 [“This language is patterned after the language in § 4852.05. Thus the standard should be comparable to that required for the issuance of a certificate of rehabilitation.”].) The amended bill became section 1203.4a. (Stats. 1963, ch. 1647, p. 3236, § 1.)

After the Legislature added the “interests of justice” provision to section 1203.4 in 1971 (Stats. 1971, ch. 333, p. 667, § 1), some observed that section 1203.4a—which did not then carry a similar provision—erected more stringent standards for relief than in section 1203.4. Various legislative committees noted the “inconsistency in the two dismissal statutes” and called for action to resolve it.²⁰ (Assem. Com. on Appropriations at p. 24; see also Sen. Com. on Public Safety at p. 31 [“the current law applies a harsher standard for expungement to persons convicted of misdemeanors or infractions who are not granted probation than to those who were granted probation”].) The Legislature added the

²⁰ The People have concurrently filed a Motion for Judicial Notice of the committee reports. Those reports are referenced by the committee considering the bill in this brief: “Assem. Com. on Appropriations,” “Assem. Com. on Public Safety,” and “Sen. Com. on Public Safety.” Page citations are to the Bates numbering on the exhibits attached to the Motion.

“interests of justice” provision—section 1203.4a, subdivision (b)—in 2011. (Stats. 2011, ch. 284 (A.B. 1384), § 1.)

Relief granted under either subdivision has the effect of releasing a petitioner “from all penalties and disabilities resulting from the offense[.]” (§ 1203.4a, subd. (a).) However, as with the schemes identified above, the expunged conviction may still be “pleaded and proved” as a prior offense in any “subsequent prosecution of the defendant for any other offense” (§ 1203.4a, subd. (c)(1)); it does not “permit a person to own, possess, or have in his or her custody or control any firearm” (§ 1203.4a, subd. (c)(2)); and such persons who are “prohibited from holding public office as a result of that conviction” may not “hold public office.” (§ 1203.4a, subd. (c)(3).)

Nor does rehabilitative expungement under section 1203.4a broadly eliminate all federal immigration consequences that flow from a conviction.²¹ (See generally *Prado v. Barr* (9th Cir. 2019) 923 F.3d 1203; *Nunez-Reyes v. Holder* (9th Cir. 2011) 646 F.3d 684.) More narrowly, within the Ninth Circuit, however, expungements of certain simple drug possession convictions may operate to avoid removal if specific requirements are met. (See 3 Imm. Law Service 2d § 13:22 (2nd ed. 2019); *Nunez-Reyes v. Holder*, *supra*, 646 F.3d at p. 694 [for convictions prior to date of en banc decision (July 14, 2011), government may not remove on

²¹ The Legislature passed Assembly Bill 208 in late 2017, amending the provisions of section 1000 to provide a pretrial diversion program for qualifying drug possession offenses. (Stats. 2017, ch. 778 (A.B. 208), § 1.) Because a defendant does not plead guilty in a pretrial diversion program, it does not count as a “conviction” for federal immigration purposes. (See 8 U.S.C. § 1101(a)(48)(A).) The same is not ordinarily true of rehabilitative expungement schemes.

the basis of simple drug possession conviction that has been expunged and meets certain other requirements].)²²

SUMMARY OF ARGUMENT

Subdivision (a) of section 1203.4a permits petitioners like Maya to request that a court set aside a misdemeanor conviction

at any time after the lapse of one year from the date of pronouncement of judgment, if he or she fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land[.]

(§ 1203.4a, subd. (a).) There is no dispute that Maya met four of the five eligibility requirements contained in subdivision (a). Maya waited for one year from the date of the pronouncement of judgment; he fully complied with and performed the sentence of the court; he was not serving a sentence for any offense or charged with a crime when he filed his expungement petition; and there is no suggestion that he broke any laws while in custody.²³ The only question before this Court is whether the trial court abused its discretion in determining that Maya failed to establish that he had, “since the pronouncement of judgment, lived an honest and upright life[.]” (§ 1203.4a, subd. (a).)

²² As noted above, Maya was convicted on July 7, 2011. (CT 33-37.)

²³ The People argued before the Court of Appeal that Maya was ineligible for relief because he was placed in immigration custody as a result of his prior methamphetamine possession conviction, so he was “then serving a sentence for any offense” or “under charge of commission of any crime.” (Resp. Ans. 13-14.) The People now agree that Maya has met the requirement that he not be “serving a sentence for any offense and is not under charge of commission of any crime.” (§ 1203.4a, subd. (a).)

Maya devotes his opening brief to arguing that a court may consider a petitioner's time in custody in making this determination. The People agree. Nothing in the text of section 1203.4a, subdivision (a) categorically forbids a court from considering custodial actions and achievements in assessing whether a petitioner has lived an "honest and upright life." But Maya ignores the high bar that this language sets for relief. As explained below, the showing for an "honest and upright" life for purposes of section 1203.4a is similar to that required by section 4852.05. A petitioner must make more than the negative showing that he or she has not broken any laws or rules. Rather, the petitioner must make the affirmative showing that he or she has been rehabilitated—that the petitioner has put his or her past criminal challenges behind and has restored himself or herself as a responsible member of society.

This can be a difficult showing to make for a petitioner who has spent all of the relevant time in custody—particularly where the petitioner's own past failures relate to temptations from the outside world. In those circumstances, a trial court may appropriately conclude that a petitioner has not proven to its satisfaction that he or she has been rehabilitated by pointing solely to his or her conduct in custody and relying primarily on the absence of misconduct. And that is what appears to have occurred in this case. While the record is not the model of clarity, it shows that the trial court in its discretion considered the sparse evidence presented by Maya and found it lacking to show Maya rehabilitated from his previous substance abuse-related problems. The court did not abuse its discretion in denying relief on the record presented here.

ARGUMENT

I. THE “HONEST AND UPRIGHT LIFE” REQUIREMENT IN SECTION 1203.4a SETS A HIGH BAR FOR EXPUNGEMENT

The interpretation of a statute is reviewed de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.) The rules of construction are well-known to this Court. Courts must ascertain the Legislature’s intent to effectuate the purpose of the statute. (*People v. Ruiz* (2018) 4 Cal.5th 1100, 1105.) They begin by “examining the words of the statute, affording them their ordinary and usual meaning and viewing them in their statutory context.” (*People v. Colbert* (2019) 6 Cal.5th 596, 603 [internal quotation omitted]; see also § 4 [provisions of Penal Code “construed according to the fair import of their terms, with a view to effect [the Penal Code’s] objects and to promote justice”].) The language should be interpreted to “effectuate the purpose of the law,” and to give significance “if possible, to every word, phrase or sentence in pursuance of the legislative purpose.” (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1055.) The text of the statute “must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.” (*Ibid.*) If the statute’s text is clear, its plain meaning controls. (*People v. Ruiz, supra*, 4 Cal.5th at p. 1106.) But if the words are susceptible to more than one meaning, courts must turn to other indicia of legislative purpose. (*Ibid.*) The statute’s objectives, its legislative history, and the wider historical circumstances of its enactment may assist in ascertaining the Legislature’s intent. (*Ibid.; Carmack v. Reynolds* (2017) 2 Cal.5th 844, 850.)

Applying these rules, section 1203.4a, subdivision (a) should be read to require a petitioner to establish not only that he or she has not broken any laws or rules, but affirmatively that the petitioner has overcome his or her particular problems and challenges and is a reformed member of society.

A. Living an “Honest and Upright Life” Demands More Than Mere Compliance With Laws

Before the trial court, Maya’s attorney placed great emphasis on the fact Maya had not been re-arrested while in custody and met “jail conditions.” (See, e.g., RT 45.) Maya maintains the claim that such a showing is adequate to demonstrate an “honest and upright life” here. (OBM 18, 20.) But to be eligible for expungement, a petitioner must show that he or she “has, since the pronouncement of judgment, lived an honest and upright life *and* has conformed to and obeyed the laws of the land[.]” (§ 1203.4a, subd. (a), italics added.) Reading “honest and upright life” simply to require adherence to laws would render the second requirement superfluous. “[C]ourts should give significance to every word, phrase, and sentence of an act, and [] any construction rendering certain words surplusage should be avoided.” (*Walker v. Superior Court* (1988) 47 Cal.3d 112, 121-22; see also *Cal. Teachers Assn. v. Governing Bd. of Rialto* (1997) 14 Cal.4th 627, 634 [“In analyzing statutory language, we seek to give meaning to every word and phrase in the statute to accomplish a result consistent with the legislative purpose.”].) While a crime-free life may flow from an “honest and upright life,” the absence of convictions, standing alone, is not sufficient to prove honest and upright living.²⁴

A reading of “honest and upright life” that gives it independent force, separate from the obey-all-laws clause, also finds support in the drafting history of section 1203.4a, subdivision (a). First, as noted, the Legislature specifically rejected a proposal that would have granted expungement to

²⁴ Like Maya, the dissenting justice misread section 1203.4a, subdivision (a) to require “only that the misdemeanor comply with the law for one year following conviction.” (*People v. Maya, supra*, 33 Cal.App.5th at pp. 272; see also *id.* at p. 273 [requiring proof only that Maya “conformed his behavior to the laws of the land for one year following pronouncement of judgment”].)

any petitioner who could show that he or she had not been convicted of any non-petty crime. (See *supra*, pp. 29-31; Assem. Bill 2422 at p. 2.) Instead, the Legislature elected to require a more rigorous showing: that a petitioner has been rehabilitated—through honest and upright living—in addition to conforming to and obeying the laws of the land. (Assem. Bill 2422 at p. 4.) Second, the Legislature elected to track the language from section 4852.05—likely because, without a probation sentence, the Legislature did not have a readily available proxy for rehabilitation, as it did for petitioners covered by section 1203.4. Accordingly, both sections 1203.4a and 4852.05 require positive proof of an “honest and upright life.” (See *Wasatch Prop. Mgmt. v. Degrate* (2005) 35 Cal.4th 1111, 1118 [“When the legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded.”].)

B. An “Honest and Upright Life” Requires Affirmative Evidence of Rehabilitation

“When attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word.”

(*Wasatch Prop. Mgmt. v. Degrate, supra*, 35 Cal.4th at pp. 1121-22.)

“Honest” is defined in dictionary sources to mean “legitimate, truthful,” “of good repute: estimable,” “virtuous in the eyes of society: reputable,” “of a creditable nature: praiseworthy,” “characterized by integrity: adhering to principle: upright.” (Webster’s 3d New Internat. Dict. (1971) p. 1086; Merriam-Webster.com (2019) <<https://www.merriam-webster.com/dictionary/honest>> [as of Dec. 3, 2019] [“free from fraud or deception”; “genuine, real”; “reputable, respectful”; “worthy of praise”; “marked by integrity”].) “Upright” is similar. It is defined as being “marked by strong moral rectitude: morally correct” and implies “strict

regard for the right and resolute, thoughtful adherence to high moral principles.” (Webster’s 3d New Internat. Dict. (1971) p. 2518; Merriam-Webster.com (2019) <<https://www.merriam-webster.com/dictionary/upright>> [as of Dec. 3, 2019] [“UPRIGHT, HONEST, and JUST mean having or showing a great concern for what is right. UPRIGHT means having high moral standards in all areas of life.”].)

Both words reflect the Legislature’s intent that the petitioner show he or she has been rehabilitated (see Assem. Bill 2422 at p. 4)—that is, “restor[ed] ... to a useful and constructive place in society.” (See Merriam-Webster.com (2019) <<https://www.merriam-webster.com/dictionary/rehabilitation>> [as of Dec. 3, 2019]). Indeed, when enacting section 1203.4a, the Legislature specifically identified the provision as an “act ... relating to the *rehabilitation* of misdemeanants.” (Assem. Bill 2422 at p. 4, italics added.) As this Court noted in interpreting identical language in section 4852.05 governing “certificate of rehabilitation” relief for felons, the “standards for determining whether rehabilitation has occurred are high,” and the requirements for a certificate of rehabilitation are “strict[ly]” construed. (*People v. Ansell, supra*, 25 Cal.4th at p. 887; *People v. Shepard, supra*, 239 Cal.App.4th at p. 795.)

To be sure, the procedures set out in the certificate of rehabilitation scheme contemplate exhaustive proceedings to determine whether a felon has been rehabilitated. (§§ 4852.01-4852.16.) Section 4852.05 also requires proof that a petitioner has conducted himself or herself with “sobriety and industry” and exhibited a “good moral character,” which go beyond the requirements also contained in section 1203.4a, subdivision (a), of living an “honest and upright life” free from criminal activity. (§ 4852.05.) The procedures in section 1203.4a, subdivision (a) are less involved. And a petitioner seeking expungement of a qualifying misdemeanor is not required to separately show “sobriety and industry” and

“good moral character,” as is required of felons seeking a certificate of rehabilitation under section 4852.05. (§ 1203.4a, subd. (a).) But the bottom-line inquiry of both provisions is the same: Is the petitioner rehabilitated? The additional language in section 4852.05 likely reflects the nature of the rehabilitative inquiry for the felons covered by the statute. The Legislature could sensibly require felons to prove rehabilitation through a more rigorous list of elements than petitioners seeking expungement of misdemeanors. Conversely, the rehabilitative inquiry for a petitioner convicted of a misdemeanor is likely less demanding than the rehabilitative inquiry for a convicted felon, just as the underlying offenses are generally less serious.

Under both statutes, the “honest and upright life” requirement should nonetheless be read to serve the same purpose. “Identical language appearing in separate provisions dealing with the same subject matter should be accorded the same interpretation.” (*Walker v. Superior Court*, *supra*, 47 Cal.3d at p. 132; see also *Cal. Teachers Assn. v. Governing Bd. of Rialto*, *supra*, 14 Cal.4th at p. 643 [“[A] word or phrase, or its derivatives, accorded a particular meaning in one part or portion of a law, should be accorded the same meaning in other parts or portions of the law.”].) In section 4852.05, the requirement tests whether the petitioner “has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship.” (§ 4852.13). In section 1203.4a, subdivision (a), the “honest and upright life” requirement tests the “rehabilitation of misdemeanants.” (Assem. Bill 2422 at p. 4.)

Maya suggests that expungement under subdivision (a) should be available to him even if he is unable to show “complete reformation.” (OBM 16.) But the cases Maya cites in support describe the purpose of the expungement scheme in section 1203.4, which does not contain an “honest

and upright life” requirement, but only the requirement that the petitioner has completed his or her term of probation. If Maya’s point is only that perfection is not required for a court to grant relief under section 1203.4, the People agree. (See *supra*, pp. 25-26.)

There are parallels between what a petitioner under section 1203.4a, subdivision (a) will be required to affirmatively establish and what a probationer implicitly demonstrates by proving the successful completion of probation. As explained above (*supra*, n. 17), a court may impose conditions of probation to help a probationer “avoid future criminality.” (*People v. Moran, supra*, 1 Cal.5th at p. 403.) The conditions imposed will vary with the history and characteristics of a particular defendant, and may include more strict conditions as the defendant’s criminal record grows more aggravated. The successful completion of probation will often encompass the completion of requirements—like education courses, or substance abuse treatment programs—that tend to rehabilitate the probationer. While the petitioner under section 1203.4 is required only to prove the completion of probation, that showing necessarily also demonstrates the completion of requirements that tend to prove rehabilitation. Those subsumed requirements are similar to what showing a petitioner under section 1203.4a, subdivision (a) must make to prove an “honest and upright life.”

C. A Court May Consider Custodial Conduct and Achievements, But Proving Rehabilitation in the Custodial Context May Be Particularly Challenging

As the foregoing analysis reflects, nothing in the text, structure or purpose of section 1203.4a, subdivision (a) categorically forbids a trial court from considering custodial time in evaluating whether a petitioner has been rehabilitated. The People therefore agree with Maya that section 1203.4a, subdivision (a) contains no restriction “about *where* a

defendant must lead an honest and upright life.” (OBM 25, italics added.) Section 1203.4a, subdivision (a) therefore permits a “court to consider an individual’s time spent in” any custody—immigration detention, mental health commitment, or criminal custody, for example—“as part of the determination whether that individual has lived an ‘honest and upright life.’” (OBM 5.)

But considering detention conduct in evaluating an expungement request is distinct from finding in-custody conduct sufficient to discharge a petitioner’s burden to prove rehabilitation through an “honest and upright life.” As the court below observed, a “custodial setting necessarily restricts an inmate’s exercise of free will[.]” (*People v. Maya, supra*, 33 Cal.App.5th at p. 270.) Moreover, “confinement necessarily precludes evidence of inmate behavior in the face of outside temptation.” (*Ibid.*) Those limitations may hinder a petitioner—particularly one with an extensive criminal record—in establishing rehabilitation while in custody. And the rehabilitative analysis necessarily turns on the particular facts before the trial court. In assessing whether an individual has been rehabilitated, the trial court may consider a variety of factors, including: the nature and severity of the conviction;²⁵ a petitioner’s criminal record;²⁶ efforts at self-improvement—like education courses or mental health and substance abuse treatment programs;²⁷ the presence or absence of sincere

²⁵ The Legislature codified analogous principles in section 4852.03, which increases the minimum period of rehabilitation for petitioners seeking a certificate of rehabilitation based on the seriousness of the underlying crime. (§ 4852.03.)

²⁶ (Cf. *People v. Shepard, supra*, 239 Cal.App.4th at p. 794 [considering other felony conviction sustained by a petitioner].)

²⁷ (Cf. *People v. Zeigler* (2012) 211 Cal.App.4th 638, 668-669 [reversing the grant of a certificate of rehabilitation based on “bare-bones factual allegations of the petition” and requiring more information about the

expressions of remorse;²⁸ and a court’s view about whether the petitioner’s circumstances allow it to test whether he or she has truly forsworn the criminal conduct that led to the conviction.²⁹ A trial court may therefore demand more exacting evidence of rehabilitation—through affirmative evidence of honest and upright living—as the seriousness of the particular petitioner’s past offenses and challenges increase. While none of that bars a court’s consideration of custodial behavior, it also reflects that some petitioners may find proving rehabilitation difficult while housed in custody. The encumbrances that come with detention may limit the range of evidence a petitioner has to prove rehabilitation by living an “honest and upright life.”

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT MAYA FAILED TO ESTABLISH THAT HE HAD LIVED AN “HONEST AND UPRIGHT LIFE”

A. A Trial Court Must Exercise Its Discretion In Making the Requisite Factual Findings in Section 1203.4a, Subdivision (a)

Section 1203.4a provides that a petitioner “shall ...be permitted by the court to withdraw his or her plea of guilty” and that the court “shall set aside the verdict of guilty” and thereafter “dismiss the accusatory pleading against the defendant,” if eligibility requirements are met. (§ 1203.4a,

“defendant’s residence, employment or activities during the rehabilitation period”].)

²⁸ (Cf. *People v. Blocker*, *supra*, 190 Cal.App.4th at pp. 444-445 [observing that it was not an abuse of discretion for trial court to “entertain doubts about how real or complete was the rehabilitation of one who insisted on his factual and legal innocence”].)

²⁹ (Cf. *People v. Failla* (2006) 140 Cal.App.4th 1514, 1522 [“As we have explained, the trial court conducts a thorough inquiry into the applicant’s conduct and character from the time of the underlying crimes through the time of the certificate of rehabilitation hearing.”].)

subd. (a).) Although the term “shall” often connotes a mandatory command (*People v. Standish* (2006) 38 Cal.4th 858, 869), that instruction is triggered in subdivision (a) only after a petitioner establishes that he or she has lived an “honest and upright life.”³⁰ The “honest and upright life” requirement, in turn, “establishes a standard of behavior and gives the court some discretion in granting withdrawal of the conviction.” (§ 1203.4a (new): *Rehabilitation of Misdemeanants, supra*, at p. 753-754.) It gives a court the implicit discretion to decide whether a petitioner has demonstrated to its satisfaction that he or she has been rehabilitated.³¹ (Cf. § 4852.13; *People v. Lockwood, supra*, 66 Cal.App.4th at pp. 227-228.)

The trial court’s task under subdivision (a) is to determine whether a petitioner has established to its satisfaction that the petitioner has led an

³⁰ Section 4852.13, before an amendment in 1996, also directed that a court “shall” grant a certificate of rehabilitation. It was amended, from “shall” to “may” in 1996 to “make clear that trial courts had discretion on this issue.” (*People v. Lockwood, supra*, 66 Cal.App.4th at p. 227.) But even prior to the amendment, “the statute had been interpreted as vesting discretion in the trial court.” (*Ibid.*)

³¹ The relevant period of analysis is from “the pronouncement of judgment” to the time the petition is adjudicated. The text allows a defendant to seek relief “at any time after the lapse of one year from the date of pronouncement of judgment, if he ... has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land[.]” (§ 1203.4a, subd. (a).) By its plain terms, the statute provides that a petitioner may apply for expungement relief only *after* one year passes from pronouncement of judgment, and further provides that a petitioner must show he or she has lived an “honest and upright life” “since the pronouncement of judgement[.]” Nothing in that text limits the rehabilitation period. Although Maya took a different position below, Maya now agrees that the relevant period of analysis for his petition extends beyond the one-year period, since he invokes his time in immigration custody as relevant to the analysis. (OBM 5; CT 51 [demonstrating that Maya did not go into immigration custody for well over a year after judgment].)

“honest and upright life” since judgment was entered until the petition is adjudicated.

B. The Trial Court Reasonably Concluded That Maya Failed to Meet His Burden to Show He Was Rehabilitated

Whether evidence is sufficient to satisfy a Penal Code definition is reviewed under a deferential standard of review. (*People v. Prunty, supra*, 62 Cal.4th at p. 71.) The decision to grant or deny expungement relief is reviewed for an abuse of discretion. (*People v. Lockwood, supra*, 66 Cal.App.4th at p. 227.) A reviewing court “cannot find that the lower court abused its discretion unless such an abuse is ‘manifest’ and results in a ‘miscarriage of justice.’” (*Ibid.*) On the record here, the trial court did not abuse its discretion in concluding that Maya failed to prove that he had rehabilitated himself from his serious and longstanding substance abuse problems.³²

Before the trial court, Maya’s principal argument in seeking expungement was that he had obeyed the laws after judgment was imposed. He so argued during the first hearing on expungement. (RT 36 [“And clearly, he’s obeyed all laws. If he’s obeyed all laws, that would presume from the time of June 2011 to 2012, he has obeyed all laws.”]; RT 39 [“But what I do think is important is people do commit crimes in custody and he

³² As described above (*supra*, pp. 20-21), the trial court began the hearing on the motion for reconsideration by addressing the requirements of section 1203.4. However, it ultimately conducted the necessary evaluation when it described the requirements of an honest and upright life during its subsequent analysis. (RT 52-53.) In any event, this Court should affirm on any ground “properly supported by the record.” (*People v. Chavez* (2018) 4 Cal.5th 771, 779 (2018), quotation omitted.) Because the record does not contain sufficient evidence to show that Maya led an “honest and upright life” while housed in state and immigration custody, this Court may affirm the denial of his petition.

didn't."]; RT 40 ["(H)e has obeyed the laws ... There have been no run-ins with the law."].) He reiterated those arguments in his motion for reconsideration. (CT 48 ["The probation report confirmed that Mr. Vences Maya had 'obeyed all laws,' 'completed required jail conditions,' and 'according to a recent review of CLETS, the defendant had not received any new arrests.'"]; *ibid.* ["Given the clear record, based on the probation department's analysis, that the Petitioner had not reoffended or in any way demonstrated negative conduct since the pronouncement of judgment, it is clear that the Petitioner is entitled to relief, as a matter of law."].) He made the same argument at the hearing on the motion for reconsideration. (RT 45 ["Number one, he received no arrests after that point. Number two, as stated in the probation report, that he completed all required jail conditions."].) And Maya advances similar arguments before this Court. (OBM 13-14 ["Defense counsel argued that expungement must be ordered if all of the conditions of section 1203.4a, subdivision (a) are met claiming that appellant had no arrests and had completed all custody conditions."].)

But as explained above, mere compliance with the law is insufficient to warrant expungement under section 1203.4a, subdivision (a). (Cf. *People v. Parker* (2006) 141 Cal.App.4th 1297, 1310 ["California's interest ... is not limited to establishing the absence of a criminal record. The state must be assured that the court receives unequivocal evidence that the individual has achieved the temperament and character necessary before the court grants a certificate of rehabilitation or the Governor grants a pardon."].) While Maya satisfied his burden to prove that he had "conformed to and obeyed the laws of the land," that met only one of his eligibility requirements. (§ 1203.4a, subd. (a).) Maya's crime-free period in custody—while commendable—did not establish on its own that Maya had been rehabilitated by putting six years of driving under the influence behind him.

The few times Maya went beyond the absence of criminal conduct to support his petition, he either offered only a conclusory assertion that he lived an “honest and upright life” (see, e.g., RT 36-37, 40, 46; CT 45, 47), or relied on an absence of evidence by contending that “nothing ... demonstrated that he ... failed to live an honest and upright life.” (CT 48; see also RT 37 [“There’s nothing in this probation report that indicates that he has not lived an honest and upright life during that year following the pronouncement of judgment.”].) But it was Maya’s burden to show affirmatively that he led an “honest and upright life”; pointing to the absence of contrary evidence—given his recidivist record—fell short. And though Maya’s attorney alluded at one hearing to the “steps” Maya took “to live an[] honest and upright life”—by referencing Maya’s completion of court-ordered AA classes and participation in fire camp while in state prison (CT 37)—the trial court was justifiably skeptical that those actions were sufficient to prove his rehabilitation.³³

As the trial court observed, “this was [Maya’s] sixth driving-under-the-influence conviction dating back to 2004.”³⁴ (RT 52.) “So the concerning conduct of supervision would be someone out on the roads driving while impaired and clearly he’s not going to be doing that in prison.” (*Ibid.*) In light of Maya’s particular history, the trial court reasonably required more than the bare claim that Maya had lived a virtuous life. While a similar declaration about rehabilitation may well have been adequate for some other petitioner—convicted for the first time of a “low level” misdemeanor offense and not marred by a long record of committing crimes (see Sen. Com. on Public Safety (2011) at p. 30)—it

³³ Nor did those achievements squarely address the question Maya presents here, as they did not occur during immigration custody; they were instead part of his state sentence.

³⁴ It was actually Maya’s eighth conviction.

was not an abuse of discretion for the trial court here to require more. (Cf. *People v. Lockwood, supra*, 66 Cal.App.4th at p. 230 [observing that a petitioner may refile a petition for certificate of rehabilitation that is initially denied because “rehabilitation may well take years to achieve”].)

Maya had previously been convicted of driving under the influence seven times. (Prob. Rep. 8-10.) He was arrested in February 2004. (*Id.* at 8.) Before that case was resolved, he was arrested again in August 2004. (*Ibid.*) He was convicted of each offense. He violated probation on both convictions by sustaining another arrest for drunk driving in December 2004. (*Ibid.*) Before that case was resolved, he was arrested for drunk driving again in February 2005. (*Id.* at 9.) In May 2005, he was convicted of both offenses. (*Ibid.*) He was then arrested in October 2006 for driving with a .19% blood alcohol content. (*Ibid.*) He was arrested two weeks later on bond, driving intoxicated with a blood alcohol level of .21%. (*Ibid.*) He was convicted of both offenses, served two years in state prison for those convictions, and he was discharged from parole in January 2009. (*Ibid.*) By July 2009, he was drinking and driving again and was again arrested for drunk driving. (*Id.* at 2.) Maya was on bail for that offense when arrested in this case. (CT 8.)

In light of that record—and Maya’s persistent disregard for the law—the trial court was within its discretion in requiring more proof of Maya’s “honest and upright living,” and to demand evidence about “whether he leads a law-abiding life when out of custody[.]” (RT 53.) As the Court of Appeal observed, “[p]rison confinement necessarily precludes evidence of inmate behavior in the face of outside temptation.” (*People v. Maya, supra*, 33 Cal.App.5th at p. 270.) The trial court plausibly concluded that Maya offered little to show that he would not succumb to those temptations. Given Maya’s particular challenge with driving under the influence, the trial court rightly demanded more evidence of rehabilitation. On this record

and in light of Maya's lengthy criminal history, the trial court did not abuse its discretion in denying Maya expungement under section 1203.4a, subdivision (a).

Maya nowhere explains how he met his burden below. In fact, Maya appears to concede that he did not, requesting instead an opportunity on remand "to present any reliable evidence he can muster to establish good behavior while subject to immigration detention[.]" (OBM 25.) Maya had that opportunity—at least twice—before the trial court. Maya also appears to dilute the requirements of showing an "honest and upright life," conflating—as he did below—the absence of criminal arrests or convictions with an honest and upright living. But simply pointing to the absence of arrests for those crimes is insufficient to establish an "honest and upright life." Maya seems to acknowledge that, suggesting that some individuals may show virtuous living by participating in "education and rehabilitation programs" or "perform[ing] a heroic act while in custody." (OBM 20.) Maya's counsel mentioned without elaboration Maya's attendance at AA meetings and "fire camp," but beyond this offered no evidence that Maya participated in education programs or performed any noteworthy acts while in custody. (CT 37.) "Good behavior" requires more than the absence of criminal misdeed, at least for a petitioner with a record like Maya's. (OBM 21; see also *People v. Maya*, *supra*, 33 Cal.App.5th at pp. 270 ["Compliance with prison regulations in an institutional setting does not satisfy the requirement of an honest and upright life. ... an honest and upright life demands more than mere compliance with prison regulations or participation in prison classes and activities."].) Because the appellate record here does not support relief, the trial court's decision should be affirmed. (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609 [record on appeal must support claim of error].)

Instead of pointing to evidence that Maya lived an “honest and upright” life, Maya’s chief complaint is that the trial court did not even “consider” Maya’s time in immigration custody “as part of the determination” of whether he had lived an “honest and upright life.”³⁵ (OBM 5; *see also* OBM 9-10.) But it does not appear that the trial court committed that error. (RT 41, 52-53.)

Granted, during the first expungement hearing, the court did observe that “being in custody for substantial periods of time is calling that an honest and upright life. I disagree.” (RT 41.) But rather than exclude in-custody conduct categorically from an assessment of a person’s honest and upright life, the court suggested at the hearing on the motion for reconsideration that its observations hinged on Maya’s particular circumstances. The court considered Maya’s specific “concerning conduct,” which was being “out on the roads driving while impaired[.]” (RT 52.) “[C]learly he’s not going to be doing that in prison.” (*Id.*) The court’s comments can fairly be construed to mean that, in the court’s view, Maya did not sustain his burden of proving rehabilitation. Maya had committed multiple acts of drunk driving over a period of years, and he could not show he had put that behind simply by pointing to the absence of convictions while confined in custody. Nor was his bare claim to honest and upright living—in the artificial confines of detention—sufficient to show that he would not drive under the influence anymore.

³⁵ The Court of Appeal at times appears to characterize the trial court’s decision similarly. (*People v. Maya, supra*, 33 Cal.App.5th at pp. 269 [“In ruling, the trial judge decided that being ‘in custody for substantial periods of time’ cannot be considered leading an ‘honest and upright life’ as required by statute.”].) But as explained above, a fair reading of the trial court’s remarks reflect that it did in fact consider Maya’s particular circumstances and context. And in any event, this Court may affirm on the basis of this record that, as a matter of law, Maya did not satisfy his burden to prove rehabilitation.

Maya contends that requiring him to make any additional showing raises “policy concerns” because he was detained involuntarily by immigration authorities. (OBM 21-26.) Maya’s argument is legally and factually unsupported. Maya relies on two cases, *People v. Galvan* (2007) 155 Cal.App.4th 978, and *People v. Cervantes* (2009) 175 Cal.App.4th 291, which reversed probation revocation sentences imposed after defendants could not report to probation because they had been deported. As those courts recognized, probation revocations may only follow a “willful violation of the terms and conditions of probation.” (*People v. Galvan, supra*, 155 Cal.App.4th at p. 985.) There, each defendant’s failure to report was “not the result of irresponsibility, contumacious behavior or disrespect for the orders and expectations of the court, nor did it constitute a willful violation of his probation condition.” (*Id.*) Instead, the defendants could not report because they had been deported by federal immigration authorities. Those cases hold that persons should not suffer punishment or reprimand for violating probation terms due to circumstances beyond their control.

As the Court of Appeal here recognized, those cases “are not relevant” in evaluating Maya’s expungement request. (*People v. Maya, supra*, 33 Cal.App.5th at p. 271.) Expungement is not punishment, but rather legislative grace. (See *People v. Allen* (2019) 41 Cal.App.5th 312.) It is an act of governmental leniency, designed to reward defendants for rehabilitation. (Cf. *People v. Ansell, supra*, 25 Cal.4th at pp. 887-888.) To obtain this benefit, by statute, the petitioner bears the ultimate burden of proof to show that he or she is entitled to expungement. Moreover, Maya’s particular inability to demonstrate his rehabilitation in these circumstances owed largely to the six years he spent “out on the roads driving while impaired” (RT 52) and his resulting prison sentence, and not to his immigration detention.

The People note that this need not be the last word on expungement for Maya (or others situated like him). There is no bar to filing successive expungement petitions—as Maya did in 2015 and again in 2018—where time has passed and a petitioner may point to new facts that bear on the analysis. (See CT 38-60, RT 32-53; cf. *People v. Lockwood*, *supra*, 66 Cal.App.4th at p. 230 [“Even if a petition [under section 4852.01, et seq.] is denied, a petitioner is not barred from filing a new claim in the event of ‘changed circumstances.’”].) If Maya chooses to file another petition, he will have the benefit of this Court’s clarification of the requirements of section 1203.4a, subdivision (a). He may attempt to present evidence to sustain his burden to demonstrate rehabilitation, or he may pursue a claim that he should be granted expungement “in the interests of justice” under subdivision (b).³⁶ But in the petition at issue before this Court, Maya has not fulfilled his burden to show he is entitled to relief under section 1203.4a, subdivision (a).

³⁶ As noted, Maya’s attorney disavowed any reliance on section 1203.4a, subdivision (b) on Maya’s motion for reconsideration, (see RT 49), and the trial court’s application of the “interests of justice” provision was not placed in issue on appeal.

CONCLUSION

The judgment should be affirmed.

Dated: December 9, 2019

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CERTIFICATE OF COMPLIANCE

I certify that the attached Respondent's Answering Brief uses a 13 point Times New Roman font and contains 10,765 words.

Dated: December 9, 2019

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Misael Vences Maya**

Case No.: **S255371**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

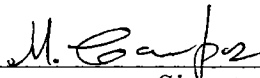
On December 9, 2019, I served the attached **RESPONDENT'S ANSWER BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 9, 2019, at San Francisco, California.

M. Campos

Declarant



Signature