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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

NORA L. TANG,

Defendant and Appellant.

B269690

(Los Angeles County  
Super. Ct. No. GA087640)

APPEAL from an order of the Superior Court of Los Angeles County, Jared D. Moses. Reversed.

Trisha Newman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

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In August 2011 a jury convicted Nora Tang of one count of felony child abuse (Pen. Code, § 273a, subd. (a))<sup>1</sup> and one count of inflicting cruel or inhuman corporal punishment on a child resulting in a traumatic condition (§ 273d, subd. (a)). The jury also found true the allegations, in connection with both counts, that Tang personally inflicted great bodily injury on a child under the age of five, within the meaning of section 12022.7, subdivision (d).

The trial court sentenced Tang in September 2011. The minute order states that the court imposed the middle term of four years on the felony child abuse count, imposed the middle term of four years on the corporal punishment count, stayed execution of sentence on both counts pursuant to section 654, imposed the middle term of four years on each of the great bodily injury enhancements, stayed execution of the sentence on both enhancements pursuant to section 654, and then struck both enhancements.<sup>2</sup> The court placed Tang on probation for four years, and imposed various terms and conditions, including 360 days in jail.

Tang completed her probation without any violations and in compliance with all terms and conditions. On September 15, 2015 the court, noting that Tang's probation "expired by operation of law," terminated the proceedings.

On September 16, 2015 Tang filed a petition for dismissal of the convictions pursuant to section 1203.4 on the ground she had "fulfilled the conditions of probation for the entire period thereof." The People opposed the petition, arguing that Tang was

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<sup>1</sup> Statutory references are to the Penal Code.

<sup>2</sup> Neither side challenges the legality of that sentence.

not entitled to relief under section 1203.4 because the sentencing court never should have placed Tang on probation and the injuries to the victim were permanent.

In January 2016 the trial court denied the petition. The trial court initially expressed disagreement with the sentencing judge's decision in 2011. Referring to the prior judge's finding that the injuries were "less severe than normal" in shaken baby cases, the trial court stated, "To me, that is completely disingenuous" and "a little bit mind-boggling that the court could reach that conclusion. And so, in looking at this, my initial gut reaction to this is I think expungement is a benefit that Ms. Tang should not be entitled to, given the nature of the offense, the seriousness of the offense, and the nature of the injuries." The court recognized that it could not "consider the seriousness of the offense" in ruling on Tang's petition, which the court stated "is a little bit mind boggling, given that somebody could receive probation for murder, technically, or attempted murder and the court could not consider the nature of the offense when determining whether the expunge that particular conviction. To me, that flies in the face of logic and common sense."

The court ruled, "with that background and my grave reluctance to grant this expungement request," that the cases the court had reviewed were "all plea bargain cases where the defendant accepted responsibility . . . . In this case, there was a jury trial. There was not an acceptance of responsibility. There was no plea bargain. There was a sentence by the judge at the conclusion of the jury trial, which, as I am looking at the transcript, to me, defies logic and common sense. But I'm not the sentencing judge. I didn't sit over the trial. So that decision, of course, is due some deference. But, nevertheless, I think that

this case is significantly distinguishable from all these other cases and that there was no agreed upon disposition and there was no plea. There was no acceptance of responsibility. There was a jury trial. The defendant was convicted of serious and violent felonies at that jury trial. And, because of that, I think that distinguishes this case from all the others.” For that reason, and stating “maybe the appellate court is going to tell me I’m wrong on this,” the court denied the petition. Tang timely appealed.

Tang argues, the People concede, and we agree that the trial court erred in denying Tang’s petition under section 1203.4. Section 1203.4, subdivision (a)(1), provides, in relevant part: “In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation . . . the defendant shall, at any time after the termination of the period of probation, if 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, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.”

“Relief under Penal Code section 1203.4 is often referred to as ‘expungement’ of the conviction but that term is not technically correct. [Citation.] ““A grant of relief under section 1203.4 is intended to reward an individual who successfully completes probation by mitigating some of the consequences of

his conviction. . . .” [Citation.] ‘However, such relief “does not, properly speaking, “expunge” the prior conviction. The statute does not purport to render the conviction a legal nullity.’”’ (*People v. Parker* (2013) 217 Cal.App.4th 498, 500-501; see *People v. Seymour* (2015) 239 Cal.App.4th 1418, 1429 “[s]trictly speaking . . . section 1203.4 does not “expunge” the conviction, nor render it ‘a legal nullity,’” but “the ‘release[ ] from all penalties and disabilities’ under section 1203.4 is a ‘palpable benefit, such that the conviction may be treated as if it were not a conviction for most purposes’”). ““The expunging of the record of conviction is, in essence, a form of legislatively authorized certification of complete rehabilitation based on a prescribed showing of exemplary conduct during the entire period of probation.”’ (*People v. Lewis* (2006) 146 Cal.App.4th 294, 297; see *People v. Mgebrov* (2008) 166 Cal.App.4th 579, 584 [““[a] grant of relief under section 1203.4 is intended to reward an individual who successfully completes probation by mitigating some of the consequences of his conviction and, with a few exceptions, to restore him to his former status in society to the extent the Legislature has power to do so””].)

The statute applies to defendants who, like Tang, have “fulfilled the conditions of probation for the entire period of probation,” whether the defendant entered a “her plea of guilty or plea of nolo contendere” or was “convicted after a plea of not guilty.” (See, e.g., *In re Hickman* (1941) 18 Cal.2d 71; *People v. Mgebrov, supra*, 166 Cal.App.4th 579.) When a qualified defendant is convicted on a plea of not guilty, the trial court, subject to certain exceptions not relevant here, “shall” set the plea aside, and “shall” dismiss the information. (See *In re Griffin* (1967) 67 Cal.2d 343, 347, fn. 3 “[o]n application of a defendant

who meets the requirements of section 1203.4 the court not only can but must proceed in accord with that statute”]; accord, *People v. Parker, supra*, 217 Cal.App.4th at p. 501; see also *People v. Johnson* (2012) 211 Cal.App.4th 252, 260 [“[u]nder Penal Code section 1203.4, when a defendant has “fulfilled the conditions of probation for the entire probationary period” he or she “is entitled as a matter of right to have the plea or verdict of guilty changed to one of not guilty, to have the proceedings expunged from the record, and to have the accusations dismissed””]; *People v. Tran* (2015) 242 Cal.App.4th 877, 892, fn. 6.)

Therefore, because it is undisputed that Tang fulfilled the terms of her probation for the entire four-year term of her probation, the trial court erred in denying Tang’s petition under section 1203.4. The court’s January 8, 2016 order denying Tang’s petition is reversed, and the matter is remanded with directions to enter a new order granting Tang’s petition.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.