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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,  
APPELLATE DIVISION,

Respondent,

JOHN KARL COOK,

Real Party in Interest.

B277626

(Los Angeles County  
Super. Ct. No. 6TR01907)

(Appellate Div. Case No.  
BS162640)

ORIGINAL PROCEEDINGS in mandate, George F. Bird,  
Judge. Petition denied.

Jackie Lacey, District Attorney, Steven Katz, Head Deputy  
District Attorney, June Chung, Deputy District Attorney, for  
Petitioner.

No appearance for Respondent.

Law Offices of Myles L. Berman, Scott D. Karpf; Law  
Offices of Dennis A. Fischer and Dennis A. Fischer, for Real  
Party in Interest.

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After John Karl Cook was charged with misdemeanor driving under the influence of alcohol (DUI) and related Vehicle Code violations (Veh. Code, §§ 23152, subds. (a)-(b), 20002, subd. (a)), the trial court granted his request to participate in a military diversion program pursuant to Penal Code section 1001.80.<sup>1</sup> The appellate division of the Los Angeles Superior Court granted the People's petition for writ of mandate, and directed the trial court to vacate its order granting diversion on the ground that Cook was statutorily barred from pretrial diversion by Vehicle Code section 23640. We transferred the case to this court pursuant to California Rules of Court, rule 8.1002. We conclude that Vehicle Code section 23640 does not bar Cook from participating in the section 1001.80 military diversion program.

### **FACTUAL AND PROCEDURAL SUMMARY**

On April 4, 2016, Cook was charged in a misdemeanor complaint with three offenses: driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), driving while having a measurable blood alcohol content of 0.08 percent or more (Veh. Code, § 23152, subd. (b)), and hit-and-run driving resulting in property damage (Veh. Code, § 20002, subd. (a)). Cook requested permission from the trial court to participate in a military diversion program pursuant to section 1001.80, which applies to

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

misdemeanor charges if the defendant was, or currently is, a member of the United States military and suffers from sexual trauma, traumatic brain injury, posttraumatic stress disorder (PTSD), substance abuse, or mental health problems as a result of his or her military service.<sup>2</sup> On May 13, 2016, the trial court granted Cook’s request to take advantage of the military diversion program.

On June 3, 2016, the People filed a petition for writ of mandate seeking to reverse the trial court order on the ground that Cook was statutorily barred from military diversion by Vehicle Code section 23640, which prohibits pretrial diversion in any case where a defendant is charged with violating Vehicle Code section 23152 or 23153.<sup>3</sup> On August 9, 2016, the appellate

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<sup>2</sup> Penal Code section 1001.80 provides in pertinent part: “(a) This chapter shall apply whenever a case is before a court on an accusatory pleading alleging the commission of a misdemeanor offense, and both of the following apply to the defendant: [¶] (1) The defendant was, or currently is, a member of the United States military. [¶] (2) The defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service . . . . [¶] (b) If the court determines that a defendant charged with an applicable offense under this chapter is a person described in subdivision (a), the court, with the consent of the defendant and a waiver of the defendant’s speedy trial right, may place the defendant in a pretrial diversion program, as defined in subdivision (k). [¶] (c) . . . If the defendant has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed.”

<sup>3</sup> Vehicle Code section 23640 provides in pertinent part: “(a) In any case in which a person is charged with a violation of

division issued a peremptory writ of mandate directing the trial court to vacate its order granting diversion and to enter a new order denying diversion.

On August 11, 2016, Division One of the Fourth Appellate District held that Vehicle Code section 23640 prohibits diversion pursuant to section 1001.80 for defendants charged with DUI offenses. (*People v. VanVleck* (2016) 2 Cal.App.5th 355, review granted Nov. 16, 2016, S237219.) On September 1, 2016, this court reached the opposite conclusion in *Hopkins v. Superior Court* (2016) 2 Cal.App.5th 1275, review granted Nov. 16, 2016, S237734. Based on these conflicting decisions, Cook filed a petition to transfer the case from the appellate division to this court under rule 8.1006 of the California Rules of Court. On September 29, 2016, pursuant to rule 8.1002 of the California Rules of Court, we ordered the case transferred from the appellate division to this court in order to secure uniformity of decision and to settle important questions of law. (See, e.g., *Borsuk v. Appellate Division of the Superior Court* (2015) 242 Cal.App.4th 607, 610-611 [ordering transfer of petition for writ of

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Section 23152 or 23153, prior to acquittal or conviction, the court shall neither suspend nor stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates during that suspension, in any one or more education, training, or treatment programs, including, but not limited to, a driver improvement program, a treatment program for persons who are habitual users of alcohol or other alcoholism program, a program designed to offer alcohol services to problem drinkers, an alcohol or drug education program, or a treatment program for persons who are habitual users of drugs or other drug-related program.”

mandate from the appellate division of the superior court to the court of appeal].)

## DISCUSSION

The sole issue in this case is whether Vehicle Code section 23640 precludes diversion under section 1001.80 for defendants charged with misdemeanor DUI offenses. This requires us to resolve an apparent conflict between the two statutes. In 2014, the California Legislature enacted section 1001.80, which authorizes a trial court to grant pretrial diversion to eligible military personnel and veterans charged with any misdemeanor offense. The provision states: “This chapter shall apply *whenever* a case is before a court on an accusatory pleading alleging the commission of a misdemeanor offense,” and the defendant is a former or current member of the military who may be suffering from service-related trauma, PTSD, substance abuse, or mental health issues. (§ 1001.80, subd. (a), italics added.) Vehicle Code section 23640, on the other hand, states that a court shall not grant pretrial diversion “[i]n *any case* in which a person is charged with a violation of Section 23152 or 23153 [DUI offenses].” (Veh. Code, § 23640, subd. (a), italics added.)

The California Supreme Court has reiterated that courts faced with this kind of apparent conflict must first attempt to reconcile seeming inconsistencies and harmonize the statutes where reasonably possible. (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955 (*State Dept.*)). Because we find, and the parties agree, that Vehicle Code section 23640 and section 1001.80 directly conflict and cannot be reconciled, we turn to the rules of construction that apply when courts are confronted with two irreconcilable statutes. “If conflicting

statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation].’ [Citation.] But when these two rules are in conflict, the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence.” (*State Dept.*, at p. 960.)

The parties disagree on the proper interpretation of these two statutes. The People argue that Vehicle Code section 23640 prohibits diversion for anyone charged with a DUI offense; and that section 1001.80 does not carve out an exception to this general rule. Cook argues that the Legislature, by enacting section 1001.80, impliedly repealed Vehicle Code section 23640 to the extent it precludes pretrial diversion for qualifying defendants.

Relying on *People v. Weatherill* (1989) 215 Cal.App.3d 1569 (*Weatherill*), the People contend Vehicle Code section 23640 is a specific statute and section 1001.80 is a general statute; therefore Vehicle Code section 23640 controls. In *Weatherill*, Division Seven of this district held that former Vehicle Code section 23202 (now Vehicle Code section 23640) prohibited pretrial diversion even though the defendant was eligible under section 1001.21, a separate diversion program for individuals with mental disabilities. (*Weatherill*, at p. 1578.) The majority opinion reasoned: “The referent of ‘general’ and ‘specific’ is subject matter. Thus, in the instant case, the subject matter of . . . section 1001.21 is misdemeanor diversion. That section, applying as it does to all misdemeanors . . . comprehends hundreds of misdemeanors in scores of codes and is therefore a general statute. [¶] By contrast, the subject matter of [former] section 23202 is driving-under-the-influence diversion. It applies

to a single type of conduct and comprehends only two offenses, sections 23152 and 23153. [Former s]ection 23202 is a specific statute and controls, to the extent of their inconsistency, the general statute . . . section 1001.21.” (*Id.* at p. 1578.)

The People contend that the majority’s analysis in *Weatherill* should govern in this case. We disagree. The rule that a specific statute controls over a more general statute has limited utility where, as here, the specificity or generality of the respective statutes depends on how the subject matter of each statute is framed. On the one hand, the subject matter of section 1001.80 can be described as a specific diversion program for qualifying defendants who are or were members of the military. (§ 1001.80, subd. (a).) Framed in this way, section 1001.80 is more specific than Vehicle Code section 23640, which prohibits diversion for all defendants charged with DUI offenses. On the other hand, if the subject matter of section 1001.80 is framed by reference to the charged offense, Vehicle Code section 23640 is more specific because it applies solely to DUI offenses whereas section 1001.80 applies to all misdemeanors. Dissenting in *Weatherill*, Justice Johnson similarly questioned the application of the general-versus-specific rule: “[i]t can be contended just as forcefully that [former] Vehicle Code section 23202 contains a general provision prohibiting diversion for any defendant in drunk driving cases while . . . section 1001.20 et seq. focus specifically on mentally [disabled] defendants and authorize diversion for this specific class of defendants no matter what misdemeanor they are charged with.” (*Weatherill, supra*, 215 Cal.App.3d at p. 1582 (dis. opn. of Johnson, J.).)

Because the general-versus-specific rule of statutory construction does not provide useful guidance as to which

provision controls in this case, we look to the rule that later statutory enactments supersede earlier ones. (See *State Dept.*, *supra*, 60 Cal.4th at p. 960.) There is no dispute that section 1001.80 is the later enactment. Section 1001.80 was enacted in 2014 (Stats. 2014, ch. 658, § 1) while Vehicle Code section 23640 was enacted in 1998 (Stats. 1998, ch. 118, § 84), and its predecessor, former Vehicle Code section 23202, was enacted in 1981 (see *Weatherill*, *supra*, 215 Cal.App.3d at p. 1579). Accordingly, we conclude section 1001.80 supersedes Vehicle Code section 23640 to the extent that the later provision prohibits diversion for defendants who qualify for the program under section 1001.80, subdivision (a).

The People maintain there is nothing in the language of section 1001.80 nor the statute's legislative history to suggest the Legislature intended to carve out an exception to Vehicle Code section 23640. They note the presumption that the Legislature is aware of statutes and prior judicial decisions, and enacts new statutes in light of existing law. (See *McLaughlin v. State Bd. of Education* (1999) 75 Cal.App.4th 196, 212 (*McLaughlin*)). Accordingly, the Legislature is deemed to be aware of the interpretation of Vehicle Code section 23640's predecessor in *Weatherill*, and thus there was no need for the Legislature to specifically exclude DUI offenses from the misdemeanors subject to diversion under section 1001.80.

We do not find this argument persuasive. The presumption that the Legislature enacts new statutes in light of prior judicial decisions is not conclusive when the new statute directly conflicts with existing law. (See, e.g., *McLaughlin*, *supra*, 75 Cal.App.4th at p. 213 [“unlike cases where lawmakers can be presumed to borrow from existing law to supply omitted meaning to later



enactments, the presumption that one legislates with full knowledge of existing law is not conclusive, and not even helpful, in cases where a later enactment directly conflicts with an earlier law”].) Further, “[t]he presumption of legislative acquiescence in prior judicial decisions is not conclusive in determining legislative intent. . . . ‘Legislative silence after a court has construed a statute gives rise at most to an arguable inference of acquiescence or passive approval. . . . In the area of statutory construction, an examination of what the Legislature has done (as opposed to what it has left undone) is generally the more fruitful inquiry’ . . . .” (*People v. Morante* (1999) 20 Cal.4th 403, 429.)

The legislative history of section 1001.80 supports our conclusion that the military diversion program was intended to apply to all misdemeanors, including DUI offenses. The Senate Committee on Public Safety analysis of Senate Bill No. 1227, which enacted section 1001.80, explained the importance of establishing a diversion program for veterans. (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 1227 (2013-2014 Reg. Sess.) Apr. 8, 2014, p. 4 (*Analysis*)). The bill analysis also includes a section summarizing other diversion programs under existing law, noting that “[e]xisting law provides for diversion of *non-DUI* misdemeanor offenses.” (*Analysis*, at p. 2, italics added.) In contrast, the analysis makes no reference to any exemption for DUI offenses when describing the new military diversion program, noting that the statute would apply to all qualifying defendants who are “accused of a misdemeanor or jail felony.”<sup>4</sup> (*Ibid.*)

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<sup>4</sup> As introduced, Senate Bill No. 1227 applied to misdemeanors and felonies punishable under section 1170,

The absence of an express exemption for DUI offenses in section 1001.80 is significant because, by contrast, other diversion programs specifically prohibit diversion for DUI offenses. As the majority in *Weatherill* noted, after former Vehicle Code section 23202 was enacted, “when the Legislature enacted or reenacted diversion programs, e.g., Penal Code section 1001 et seq. (Stats. 1982, ch. 42) and Penal Code section 1001.50 et seq. (Stats. 1982, ch. 1251), in order to avoid the risk of implied repeal, it specifically exempted all driving-under-the-influence charges.” (*Weatherill, supra*, 215 Cal.App.3d at pp. 1579-1580.) Similarly, the Los Angeles County Deferral of Sentencing Pilot Program that took effect on January 1, 2015 expressly excludes defendants charged with DUI offenses from deferral eligibility. (§ 1001.98, subd. (h)(3).) The fact that the Legislature did not expressly exclude DUI offenses in section 1001.80 supports the inference that it did not intend Vehicle Code section 23640 to preclude diversion in misdemeanor DUI cases involving military veterans.

We conclude that, in enacting section 1001.80, the Legislature impliedly repealed Vehicle Code section 23640 to the extent it precludes pretrial diversion for qualifying defendants under section 1001.80, subdivision (a). Accordingly, we find that Vehicle Code section 23640 does not bar Cook from participating in the section 1001.80 military diversion program, and therefore the appellate division erred in granting the People’s petition.

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subdivision (h). (Sen. Bill No. 1227 (2013-2014 Reg. Sess.), as introduced Feb. 20, 2014.) It was amended to exclude felonies. (Assem. Amend. to Sen. Bill No. 1227 (2013-2014 Reg. Sess.) Aug. 4, 2014.)

**DISPOSITION**

The petition for writ of mandate is denied.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.