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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RAMON ALTAMIRANO GASTELUM,

Defendant and Appellant.

B230603

(Los Angeles County  
Super. Ct. No. NA038960)

APPEAL from an order of the Superior Court of Los Angeles County. James Otto, Judge. Reversed and remanded to trial court with directions.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Steven D. Matthews and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

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Ramon Altamirano Gastelum appeals from an order denying his petition for expungement of his conviction following termination of his probation. (Pen. Code, § 1203.4.)<sup>1</sup> He contends relief under section 1203.4 must be granted because he fulfilled the conditions of his probation and the trial court had no discretion to deny the petition. We agree and reverse the order.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On February 1, 1999, appellant pled nolo contendere to theft of lost property (§ 485), and attempting to extort money (§ 524). The trial court suspended imposition of sentence and placed appellant on formal probation for three years. Appellant was required to serve 90 days in county jail and perform 200 hours of community service as directed by the probation department.

On March 1, 1999, appellant surrendered to serve the 90 days in county jail. On December 8, 2000, the court modified the terms of probation and extended the time for appellant to complete community service to October 31, 2001.

On September 26, 2001, the court continued the case to October 31, 2001, for a possible violation of probation. On October 31, 2001, appellant was ordered to report to the probation department and to submit proof of completion of community service. Appellant's term of probation was continued on the same terms and conditions.

On January 30, 2002, appellant was present in court and represented by counsel. The court read and considered the probation officer's report, and probation was continued on the same terms and conditions. On February 1, 2002, appellant's three-year term of probation expired.

On June 12, 2008, appellant filed a petition for expungement. On June 19, 2008, appellant's petition and case file were sent to Department J for consideration. On June 25, 2008, the court read and considered appellant's petition, and the petition was denied without comment.

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

On May 17, 2010, the case file was returned to archives.

On November 10, 2010, appellant filed a petition for dismissal pursuant to section 1203.4, on the grounds that he had fulfilled the conditions of his probation for the entire period and was not serving a sentence for any offense, nor on probation for any offense, nor under charge of commission of any crime.

On December 29, 2010, the petition and case printout were sent to Department J for consideration. The record indicates the court file was ordered from archives but never received. On January 3, 2011, the court reviewed the petition and case printout and denied the petition without comment.

On January 31, 2011, appellant filed a notice of appeal.

## **DISCUSSION**

Appellant contends the trial court improperly denied relief under section 1203.4 because he had fulfilled the conditions of his probation for the entire probationary period and was entitled to relief as a matter of right. The People agree that appellant is entitled to the relief he seeks.

As is relevant here, section 1203.4, subdivision (a) provides, “In any case in which a defendant 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, or 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, 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 . . . and . . . 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[.]” (§ 1203.4, subd. (a).)

“As the statutory language makes clear, there are three situations in which a defendant may be entitled to have his or her conviction dismissed. The first two—when the defendant fulfilled the conditions of probation for the entire probationary period or when the defendant was discharged before the termination of the period of probation—require the court to grant the requested relief if the conditions are met. The last requires the court to determine whether, in its discretion and the interests of justice, the relief should be granted.” (*People v. McLernon* (2009) 174 Cal.App.4th 569, 574.)

“It was apparently intended that when a defendant has satisfied the terms of probation, the trial court should have no discretion but to carry out its part of the bargain with the defendant.” (*People v. Chandler* (1988) 203 Cal.App.3d 782, 788; see also *People v. Hawley* (1991) 228 Cal.App.3d 247, 249–250; *People v. Bradus* (2007) 149 Cal.App.4th 636, 641.)

Here, appellant was entitled as a matter of right, to relief under section 1203.4.

He requested relief based on the fact that he had completed his three years of probation on February 1, 2002 and that he fulfilled the conditions of probation for the entire period of probation. Although the court at one point continued the case to October 31, 2001 for a possible violation of probation, the matter appeared to have been resolved as there is no record that indicated that appellant violated any of the conditions of probation. Nor is there any indication in the record that appellant failed to complete his community service as a term of his probation.

The court denied appellant’s petition for expungement on June 25, 2008, without comment. When appellant filed his petition on November 10, 2010, he declared under penalty of perjury that he had fulfilled the conditions of probation. Neither the prosecution nor the probation department filed any documentation opposing appellant’s request. The court denied appellant’s petition for dismissal on January 3, 2011, again without comment. Reviewing the printout, in the absence of a court record, we find no fact or finding in the record to indicate that probation conditions had not been fulfilled.

Based on this record the trial court erred as a matter of law in denying appellant's petition and he is entitled to the relief he requested under section 1203.4, subdivision (a). (*People v. Bradus, supra*, 149 Cal.App.4th at p. 643.)

### **DISPOSITION**

The trial court's order denying appellant's petition for relief under section 1203.4 is reversed and the matter is remanded to the trial court. On remand, the trial court is directed to vacate its order denying appellant's petition under section 1203.4, subdivision (a), and to enter a new order granting the petition.

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\_\_\_\_\_, J.

DOI TODD

We concur:

\_\_\_\_\_, P. J.

BOREN

\_\_\_\_\_, J.

CHAVEZ