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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LUIS ROBERTO VILLEGAS,

Petitioner,

v.

LOS SUPERIOR COURT OF
ANGELES COUNTY,

Respondent.

THE PEOPLE,

Real Party in Interest.

B294683

(Los Angeles County
Super. Ct. No. MA056936)

ORIGINAL PROCEEDINGS in mandate. Kathleen
Blanchard, Judge. Petition granted.

Patrick C. Obioha for Petitioner.

Ricardo D. Garcia, Public Defender, Albert J. Menaster and
Graciela Martinez, Deputy Public Defenders, Amicus Curiae on
behalf of Petitioner.

Garrick Allen Byers; Immigrant Legal Resource Center,
Katherine Brady; and Michael K. Mehr, Amicus Curiae on behalf
of Petitioner.

No appearance for Respondent.

Jackie Lacey, District Attorney, Phyllis C. Asayama and Matthew Brown, Deputy District Attorneys, for Real Party in Interest.

Petitioner Luis Villegas moved to withdraw his guilty plea pursuant to Penal Code section 1203.43,¹ which provides that any criminal defendant who pled guilty or no contest to a qualifying drug offense and was granted Deferred Entry of Judgment (DEJ) after January 1, 1997, successfully completed the DEJ program, and had his or her case dismissed, could move to vacate the plea and enter a not guilty plea. The trial court took the motion off calendar, effectively denying it.

Villegas filed this petition for writ of mandate, arguing he satisfies the statute and is entitled to relief. The Los Angeles County District Attorney, on behalf of the People, initially opposed the petition, conceding Villegas satisfied section 1203.43, but arguing the statute violates the constitutional separation of powers doctrine. The People have since withdrawn their opposition, indicating they do not object to Villegas's requested relief.² Villegas meets the requirements of section 1203.43, so we grant his writ petition.

¹ All undesignated statutory citations refer to the Penal Code.

² We received amicus curiae briefs from the Immigrant Legal Resource Center (ILRC), the Los Angeles County Public Defender, and the Attorney General, all of whom defended section 1203.43 as constitutional.

BACKGROUND

In 2012, Villegas pled guilty to one count of possession of a controlled substance in violation of Welfare and Institutions Code section 11377, subdivision (a). The superior court placed him on DEJ for 18 months, which Villegas successfully completed. On March 12, 2014, the court dismissed the charges pursuant to section 1000.3. (Former § 1000.3.)³

On October 19, 2018, Villegas filed a “motion to withdraw his guilty plea, enter not guilty plea and dismiss the information” pursuant to the newly enacted section 1203.43. On October 29, 2018, the trial court issued an order placing the motion “off calendar.” The court stated in a minute order: “The court indicates on 3/12/14, this case was dismissed pursuant to Penal Code section 1000 and sealed pursuant to [P]enal [C]ode section 1001.9 after successful completion of a grant of deferred entry of judgment. [¶] The court indicates under the Penal Code section as stated, there is no conviction to consider for dismissal pursuant to Penal Code section 1203.43 nor does the court have jurisdiction to consider a motion which is moot.”

Villegas filed a petition for writ of mandate, arguing he satisfied section 1203.43, so the trial court’s refusal to calendar the motion was an abuse of discretion. We issued an order to show cause. The People filed a return arguing that, while section 1203.43 applied to Villegas, it was a violation of constitutional separation of powers because it sought to legislatively undo a final judgment of dismissal entered by the trial court and declare prior pleas “invalid.” Prior to oral argument, however, the People

³ All Penal Code citations noted as “former” refer to the provisions in effect until December 31, 2017.

withdrew their opposition, indicating they have no objection to granting the relief Villegas has requested.

DISCUSSION

Prior to 2018, the Penal Code provided for deferred entry of judgment for certain low-level drug offenses. It allowed a qualifying offender⁴ to plead guilty and defer entry of judgment for at least 18 months to allow him or her to participate in a drug treatment program. (Former § 1000.1, subd. (a)(3).) If the offender satisfactorily completed the program, “the criminal charge or charges shall be dismissed.” (Former § 1000.3; see *People v. Orozco* (2012) 209 Cal.App.4th 726, 731.) Once the charges were dismissed, “the arrest upon which the judgment was deferred shall be deemed to have never occurred,” and, with the exception of applying to become a peace officer, “[t]he defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted deferred entry of judgment for the offense.” (Former § 1000.4, subd. (a).) Nor could the record of arrest “be used in any way that could result in the denial of any employment, benefit, license, or certificate,” absent the defendant’s consent. (*Ibid.*) In short, if the defendant successfully completed DEJ, the defendant’s guilty plea “shall not constitute a conviction for any purpose.” (Former § 1000.1, subd. (d).)⁵

⁴ The DEJ provisions included several disqualifying factors, none of which applied to Villegas.

⁵ As of January 1, 2018, the Legislature changed DEJ to pretrial diversion. A defendant can now participate in pretrial diversion if he or she “pleads *not guilty* to the charge or charges, waives the right to a speedy trial, to a speedy preliminary

In 2015, the Legislature passed Assembly Bill 1352, which became effective January 1, 2016. The bill added section 1203.43, which sought to avoid unintended negative immigration consequences created by a DEJ guilty plea:

“(a)(1) The Legislature finds and declares that the statement in Section 1000.4, that ‘successful completion of a deferred entry of judgment program shall not, without the defendant’s consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate’ constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences. [¶] (2) Accordingly, the Legislature finds and declares that based on this misinformation and the potential harm, the defendant’s prior plea is invalid. [¶] (b) For the above-specified reason, in any case in which a defendant was granted deferred entry of judgment on or after January 1, 1997, has performed satisfactorily during the period during which deferred entry of judgment was granted, and for whom the criminal charge or charges were dismissed pursuant to Section 1000.3, the court shall, upon request of the defendant, permit the defendant to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, and the court shall dismiss the complaint or information against the defendant. If court records showing the case resolution are no longer available, the defendant’s declaration, under penalty of perjury, that the charges were dismissed after he or she completed the

hearing, and to a trial by jury, if applicable.” (§ 1000.1, subd. (a)(3), italics added.)

requirements for deferred entry of judgment, shall be presumed to be true if the defendant has submitted a copy of his or her state summary criminal history information maintained by the Department of Justice that either shows that the defendant successfully completed the deferred entry of judgment program or that the record is incomplete in that it does not show a final disposition. For purposes of this section, a final disposition means that the state summary criminal history information shows either a dismissal after completion of the program or a sentencing after termination of the program.” (§ 1203.43, subds. (a)–(b).)

Villegas meets the requirements of section 1203.43: he pled guilty, was granted DEJ, satisfactorily completed his DEJ program, and his case was dismissed. The trial court’s view that there was no conviction to consider for dismissal and his motion was moot conflicts with the plain language of section 1203.43. The court was statutorily required to grant his motion, permit him to withdraw his guilty plea, and then dismiss his case.⁶ We will grant his unopposed petition for writ of mandate directing the trial court to do so.

⁶ We decline to address the People’s separation of powers argument, which they raised in response to Villegas’s writ petition and have since abandoned.

DISPOSITION

The petition for writ of mandate is granted. The trial court is ordered to vacate its order of October 29, 2018, taking Villegas's motion to withdraw his guilty plea off calendar, and enter a new and different order granting Villegas's motion, allowing him to withdraw his guilty plea and enter a not guilty plea, and dismissing the information.

BIGELOW, P. J.

We concur:

STRATTON, J.

WILEY, J.