

No. \_\_\_\_\_

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**In the  
Supreme Court of the United States**



JONATHAN PHILLIPS,

*Petitioner,*

v.

STATE OF CALIFORNIA,

*Respondent.*

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**On Petition for a Writ of Certiorari to the California Court  
of Appeal, Sixth Appellate District, Division Three**

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**PETITION FOR A WRIT OF CERTIORARI**

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June 10, 2025

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## QUESTIONS PRESENTED

1. Does a felony false imprisonment conviction obtained by way of a nolo contendere plea violate the due process protections of the Fifth and Fourteenth Amendments where Petitioner was never advised by his defense counsel that his plea would later make him ineligible for California Penal Code Section 17(b)<sup>1</sup> relief (reduction from felony to a misdemeanor)?

2. Has the equal protection clause of the Fourteenth Amendment been violated where individuals who have been found guilty of a felony by a jury were afforded section 17(b) relief, but Petitioner, who plead nolo contendere to the “wobbler” offense of felony false imprisonment, was not?

3. Should a felony false imprisonment conviction obtained by way of a nolo contendere plea, be reduced to a misdemeanor where, as here, it was never proven (and there is no evidence) the crime was accomplished with “violence, menace, fraud or deceit”?

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<sup>1</sup> Hereinafter, all undesignated statutory references are to the California Penal Code.

## LIST OF PROCEEDINGS

Supreme Court of California

No. S289190

The People, *Plaintiff and Respondent*, v. Jonathan  
Phillips, *Defendant and Appellant*.

Order Denying Review: March 19, 2025

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Court of Appeal of the State of California, Sixth  
Appellate District

No. H051373

The People, *Plaintiff and Respondent*, v. Jonathan  
Phillips, *Defendant and Appellant*.

Opinion: January 6, 2025

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Superior Court California

No. BB516948

People v. Jonathan Phillips

Judgment: April 13, 2006

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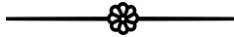
## **PETITION FOR A WRIT OF CERTIORARI**

Mr. Jonathan Phillips (hereinafter “Phillips”), by and through Orly Ahrony, Ahrony Appeals Law Group, respectfully petitions this Court for a writ of certiorari to review the opinion and judgment of the California Court of Appeal, Sixth Appellate District (Petition for Review by the California Supreme Court denied March 19, 2025).



## **OPINIONS BELOW**

The decision of the California Court of Appeal, Sixth Appellate District, unpublished No. H051373, is reprinted in the Appendix (App.) at 2a. The California Supreme Court, No. S289190, denied a Petition for Review on March 19, 2025. App.1a.



## **JURISDICTION**

The Petition for Review to the California Supreme Court was denied on March 29, 2025. App.1a. Phillips invokes this Court’s jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for writ of certiorari.



## **CONSTITUTIONAL PROVISIONS INVOLVED**

### **U.S. Constitution, Amendment V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **U.S. Constitution, Amendment XIV**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## INTRODUCTION

The due process guarantees of the Fifth and Fourteenth Amendments include the right to present a defense. A *nolo contendere* plea, such as the one entered by Phillips, waives the right to challenge evidence or testimony. If a defendant does not fully understand these implications, then the plea could not have been made knowingly and voluntarily, which is a clear denial of due process.

This is an appeal from the California Court of Appeal's decision to reaffirm the trial court's denial of Phillips' motion under 17(b) requesting that his felony false imprisonment conviction—pursuant to a plea of *nolo contendere*—suffered 19 years ago in 2006, be reduced to a misdemeanor.

False imprisonment is a “wobbler” offense. The term “wobbler” comes from the fact that the offense “wobbles” between being classified as a misdemeanor or a felony depending on the facts of the case, the charging decision of the prosecutor and the decisions of the sentencing court. Here, because Phillips pleaded *nolo contendere* to the charge as a felony in 2006—when he was only 20 years old, and thus a youth under section 1016.7—the California courts ruled that the offense was no longer a wobbler offense; it was transformed by the plea to a “straight” felony. This was an abuse of discretion which resulted in several constitutional violations.

First, Phillips was never advised by his counsel regarding the negative implications of his *nolo contendere* plea. Namely, that the plea would make him

ineligible for section 17(b) relief. Instead, his counsel convinced him to change his initial not guilty plea to a plea of *nolo contendere* by telling him that he would not get a fair trial because he was Black. Fearful of these potential consequences, and not knowing that the decision would result in him forever having a felony conviction tarnishing his record, Phillips relented and changed his plea. The *nolo contendere* plea lacked Phillips' full and complete informed consent. As such, Phillips was deprived of constitutional due process.

Second, Phillips was denied equal protection of the laws under the Fourteenth Amendment. California courts addressing 17(b) motions are often presented with situations in which the defendant entered a guilty plea to a felony or was even found guilty by a jury. Indeed, this is the underlying purpose of 17(b) relief—to reduce a felony to a misdemeanor in cases involving wobbler offenses. Yet, because Phillips pleaded *nolo contendere*, the California courts insist this somehow transformed the wobbler offense of false imprisonment to a straight felony, for which 17(b) is not available.

Third, in the context of a section 17(b) motion, it is irrelevant that Phillips pleaded *nolo contendere* to a felony. Rather, the relevant inquiry for purposes of the 17(b) motion in this case is whether the false imprisonment was “effected by violence, menace, fraud, or deceit.” (*People v. Superior Ct. (Feinstein)*, 29 Cal.App. 4th 323 (1994)). It is only upon a finding of violence, menace, fraud, or deceit that false imprisonment becomes a felony. As set forth below, the incident involving Phillips is far from what California decisional law defines as violence or menace.

Finally, the California courts erred in flatly refusing to consider Phillips' traumatic childhood and his

youth—20 years of age—at the time of the incident. Due to the passage of California Senate Bill 567 (amending section 1170(b)(6)), trial courts are now required to consider both factors in sentencing. Had these considerations been available in 2006, Phillips likely would have faced only a misdemeanor charge. Since then, Phillips has maintained an exemplary record and has contributed positively to society. He is precisely the type of individual for whom 17(b) relief is intended.

The denial of 17(b) relief, based solely on a nolo contendere plea, resulted in a fundamental miscarriage of justice. Such a plea is not an admission of guilt and does not establish the factual elements necessary to sustain a felony conviction for violence, menace, fraud, or deceit. For these reasons, Phillips respectfully petitions this Court for a writ of certiorari to review the constitutional violations and exceptional circumstances of his case.



## STATEMENT OF FACTS

In 2005, Phillips was enrolled as a student at Foothill College. On one occasion, he provided transportation to his friend, Corrina Perdue, during which a dispute arose between them. App.33a-34a. At a certain point, Ms. Perdue requested to exit the vehicle; however, they were traveling on the freeway at the time. Due to a combination of Phillips' immaturity and his inability to safely stop the vehicle under the circumstances, he failed to promptly comply with her request. (*Ibid.*)

The police report indicates that Phillips was agitated and upset because Perdue had not invited him to a party she was planning to attend. (*Ibid.*) At the time, Phillips was only 20 years old, an age at which the brain is still in a critical stage of development. His response to the perceived rejection was marked by impulsivity and poor judgment. After regaining his composure, he reduced his speed to under five miles per hour, reached across Perdue to open the passenger door, nudged her out of the vehicle, and drove away. (*Ibid.*) Fortunately, Perdue did not sustain any injuries. App.22a.



## STATEMENT OF THE CASE

In 2005, Phillips initially pleaded not guilty to the charged offense. However, at the advice of his counsel, he later changed his not guilty plea to a plea of nolo contendere. He explained what he was advised about his nolo contendere plea as follows:

Prior to the entry of this plea of Nolo Contendere, my counsel, ReBecca [sic] R. Simmons, advised me that I should change my plea from Not Guilty to Nolo Contendere for two reasons: [S]he advised me that I could not expect to receive a fair trial in the Palo Alto courts because I was a black person and would thus suffer invidious discrimination by any Palo Alto jury, and, additionally, that any Palo Alto jury would also discriminate against me at trial because I was a resident of the City and County of San Francisco.

I wished to contest the allegations of the alleged victim in this case at trial, but Ms. Simmons dissuaded me from exercising my constitutional rights to a trial by convincing me that the probability of any Palo Alto jury harboring feelings of resentment and discrimination would overcome any chance for a fair consideration of the facts of the case.

Ms. Simmons advised me that taking the plea bargain offered in which I changed my plea to Nolo Contendere of a felony count of § 829a P.C. would be in my best interests since I could thereby avoid a possible conviction by a jury whose prime consideration would be my race and where I lived at the time.

This case is the first exposure to the court system and the criminal justice system, and I relied totally on the judgment and advice of Ms. Simmons for my choices in this case.

App.37a-38a, paragraph numbering omitted, emphasis added.

Notably, there is no evidence that Ms. Simmons advised Phillips that if he agreed to a nolo contendere plea, he would become ineligible for later 17(b) relief. Entering a nolo contendere plea requires informed consent by the defendant. That was clearly not the case here.

On February 24, 2006, Phillips changed his not guilty plea to a nolo contendere plea to what was described as a felony violation of Penal Code section 236/237. He was sentenced for the offense on April 13, 2006. Execution of sentence was suspended. Phillips was placed on three years of formal probation and

ordered to serve 90 days on the weekend work program, among other conditions of probation. On April 7, 2008, Phillips moved the court to set aside his nolo contendere plea and dismiss the charge. Phillips' motion was granted, and the charge was dismissed pursuant to Penal Code section 1203.4. App.39a-40a.

Between 2008 and 2016, Phillips filed three 17(b) motions, each of which was taken off calendar or dismissed without prejudice.

On May 3, 2023, Phillips filed a fourth motion seeking relief pursuant to Penal Code section 17(b). App.42a-65a. Following a hearing on August 16, 2023, the trial court again denied his motion. Phillips' timely appeal followed.

The Court of Appeal held that "false imprisonment is not a wobbler offense because section 237, subdivision (a) does not provide for either punishment in the county jail or imprisonment in state prison."<sup>1</sup> App.14a. It further held that "section 237, subdivision (a) specifically delineates that if the false imprisonment is effected by violence, menace, fraud, or deceit, it can only be charged as a felony offense." *Ibid.* Based on this, the Court of Appeal found that because Phillips' plea was to "a straight felony charge," the trial court did not have the authority to reduce the offense. *Ibid.*

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<sup>1</sup> The reference to state prison in describing the punishments applicable in a false imprisonment case is inaccurate. In 2011, the California Legislature enacted Public Safety Realignment under which executed felony sentences for specified crimes are to be served in the county jail pursuant to section 1170(h), not state prison. Service of a section 1170(h) sentence in a county jail does not change the felony nature of the offense. CA Assem. Bill 109. Ch. 15, Stats. 2011.

Phillips Petition for Review with the California Supreme Court was denied on March 19, 2025. App.1a.



## REASONS FOR GRANTING THE PETITION

### **I. Phillips Was Deprived of Due Process in Violation of the Fifth and Fourteenth Amendments When He Agreed to a Plea of Nolo Contendere in Which He Was Never Advised, Nor Could He Have Understood, That the Plea Would Make Him Ineligible for 17(b) Relief**

The United States Supreme Court has jurisdiction under U.S.C.A. § 1257(a) to review “[f]inal judgments or decrees rendered by” the California Supreme Court. *Johnson v. California*, 541 U.S. 428, 429 (2004). This Court should grant certiorari to correct the California Court of Appeal’s decision in *People v. Phillips* which the California Supreme Court affirmed in denying Phillips’ Petition for Review. Certiorari is necessary in this case to correct the California Court of Appeal’s prejudicial decision in finding that Phillips is ineligible for California Penal Code 17(b) relief.

Section 17 provides, in relevant part:

(a) A felony is a crime that is punishable with death, by imprisonment in the state prison, or, notwithstanding any other law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes . . . .

The California Supreme Court has noted that statutory authorization for a court to exercise discretion to deem a wobbler to be a misdemeanor or felony appeared in 1874 in a more limited form than its current structure. This Court succinctly described wobblers as follows:

There is . . . a special class of crimes involving conduct that varies widely in its level of seriousness. Such crimes, commonly referred to as “wobbler[s]” are chargeable or, in the discretion of the court, punishable as either a felony or a misdemeanor; that is, they are punishable either by a term in state prison or by imprisonment in county jail and/or by a fine. (§ 17, subd.(b)(4).)

*People v. Park*, 56 Cal.4th 782, 789 (2013), internal case citations omitted.

Contrary to the ruling of the Court of Appeal in this matter, false imprisonment is a wobbler offense in California. The elements of false imprisonment are set out in section 236 through one pithy, but broad, sentence: “False imprisonment is the unlawful violation of the personal liberty of another.” The definition reads as a philosophical precept as much as a specification of the elements of a crime.

The penalty for false imprisonment is set out in section 237. Section 237 appears to be an in-artfully drafted alternate felony-misdemeanor wobbler, rather than two separate crimes, one a felony and one a misdemeanor. The penalty for false imprisonment is found in two sentences in one subdivision. The essence of the offense is the violation of the personal liberty of another, which obviously describes a very broad range of prohibited conduct. The penalties for a deprivation of another's liberty are also correspondingly relatively wide. On the low end, false imprisonment is punishable by imposition of simply a fine—making the offense necessarily a misdemeanor. § 237(a). On the high end, the offense is punishable by a felony jail sentence of three years and a fine of up to \$10,000.

False imprisonment is alternatively punishable as a felony or a misdemeanor and, thus, constitutes a wobbler offense. However, when an additional finding is made that the offense was “committed by violence, menace, fraud, or deceit,” the statute prescribes a felony sentence in the county jail under section 1170(h), and is then a straight felony that may not be reduced to a misdemeanor in the court's discretion under section 17, subdivision (b)(3). *Feinstein, supra*, 29 Cal.App.4th at p. 330.

In the present case, the California Court of Appeal found that the false imprisonment charged in this case did not qualify as wobbler because Phillips pleaded *nolo contendere* to felony false imprisonment. App.14a. As a result of his plea, the court determined that the requirement that the offense be “committed by violence, menace, fraud, or deceit” was admitted by him to be true. The appellate court's determination that Phillips' conviction for felony false imprisonment cannot be a

misdemeanor appears to rest on the faulty, circular reasoning that because Phillips entered a nolo contendere plea to what was generically described as a felony, it must remain a felony. This was prejudicial error.

In *Halbert v. Michigan*, 545 U.S. 605, 608 (2005), the State of Michigan argued that a defendant had waived his right to appointed appellate counsel by entering a nolo contendere plea. In rejecting Michigan's claim, this Court found that because "the trial court did not tell Halbert, simply and directly, that in his case, there would be no access to appointed counsel," the defendant could not be found to have waived that right. *Ibid.*

From the beginning, Phillips proclaimed his innocence to the charged offense and had even entered a not guilty plea. He later changed his not guilty plea to a nolo contendere plea after his counsel instilled in him the fear that he would be convicted and punished by the jury solely because he is Black. He was never told the full and complete implications of accepting a plea deal. He was never told that accepting this plea would make him ineligible for 17(b) relief. Nor was he ever told that the inability to reduce the felony to a misdemeanor would have lifelong negative consequences which would manifest in him not being able to find gainful employment in the career he desired, among other things. Rather, he explained:

I wished to contest the allegations of the alleged victim in this case at trial, but Ms. Simmons dissuaded me from exercising my constitutional rights to a trial by convincing me that the probability of any Palo Alto jury harboring feelings of resentment and discrim-

ination would overcome any chance for a fair consideration of the facts of the case.

App.37a, paragraph numbering omitted, emphasis added.

This critical error by Phillips' counsel damaged his ability to meaningfully understand, defend against, or knowingly accept potential adverse consequences of his nolo contendere plea.<sup>2</sup> This lack of informed consent undermines the validity of his nolo contendere plea and the later denial of relief. Like the defendant in *Halbert, supra*, 545 U.S. at p. 608, Phillips was never told, simply and directly, that his eligibility for 17(b) relief would be waived if he entered a plea of nolo contendere. As a result, he was deprived of his rights to due process under the Fifth and Fourteenth Amendments and writ relief should be granted in this case.

## **II. Phillips Was Denied Equal Protection of the Laws in Violation of the Fourteenth Amendment Because His Nolo Contendere Plea Made Him Ineligible for Sentencing under 17(b), While Other Defendants — Who Plead Guilty to or Were Found Guilty By a Jury to Have Committed Felonies—Have Been Afforded 17(b) Relief**

One of the most exasperating realizations of Phillips' predicament is the fact that 17(b) relief has

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<sup>2</sup> Even if Phillips were advised of the potential that he might be ineligible for 17(b) relief, it is highly unlikely he would have been able to meaningfully understand the true ramifications of not being able to obtain such relief as he was only 20 years old, a youth.

not been applied equally and fairly to him, as evidenced by the California cases on this issue.

In *People v. Superior Ct. (Alvarez)*, 14 Cal.4th 968, 981 (1997), the defendant was charged with felony possession of a controlled substance, a wobbler offense. The prosecution alleged and defendant admitted four prior convictions for residential burglary committed to support a drug habit. The defendant's criminal record also included four misdemeanor convictions. He received a seven-year prison term for one of the burglaries and violated his parole on several occasions. The matter went to trial and the jury returned a guilty verdict. *Id.* at p. 973.

Although the defendant in *Alvarez* was found guilty of a felony, the trial court granted the defendant's section 17(b) motion and reduced his conviction to a misdemeanor. The California Supreme Court found that it was not an abuse of discretion to grant the motion. *Id.* at p. 981.

Similarly, in *Park, supra*, 56 Cal.4th at p. 787, defendant pleaded guilty to a charge of felony assault with a deadly weapon. After successfully completing the terms of his probation, the trial court reduced the offense to a misdemeanor in accordance with the procedures in section 17(b). Again, the California Supreme Court found that the reduction was proper in that case.

These cases illustrate a clear inconsistency in the application of legal standards, as Phillips, who entered a nolo contendere plea, was denied the same opportunity for relief, despite the absence of a jury finding or admission of guilt.

This begs the question: why would a defendant who pleads guilty, or is found guilty by a jury, be eligible for 17(b) relief, while a defendant who pleads *nolo contendere*, like Phillips, is not? To adopt this line of reasoning would entirely obliterate a whole category of individuals who are eligible for relief under section 17(b), *i.e.*, those individuals who, like Phillips, may have made a single, regrettable mistake in their youth and who do not deserve to have their whole lives destroyed because of it. Wobbler crimes are ‘intended to extend misdemeanor treatment to a potential felon’ and ‘extend more lenient treatment to an offender.’” *People v. Tran*, 242 Cal.App.4th 877, 886 (2015) quoting *Necochea v. Sup. Ct.*, 23 Cal.App.3d 1012, 1012 (1972).

The California courts’ reliance on the plea of *nolo contendere* to deny section 17(b) relief is not only legally flawed but also inequitable, as it places Phillips in a worse position than defendants who plead guilty or are found guilty by a jury, both of whom have been found eligible for such relief. A *nolo contendere* plea should not disqualify a defendant from the relief options afforded to those who plead guilty or are found guilty by a jury. This disparate treatment results in unequal outcomes for defendants in similar situations, undermining the principle of equal protection under the law.

Moreover, the California courts’ decision in denying Phillips section 17(b) relief could lead to systemic inequalities within the justice system. If *nolo contendere* pleas are consistently used to deny relief, as it was in this case, it creates a class of defendants who are unfairly disadvantaged, despite the absence of a jury’s finding or admission of guilt. This undermines

the fairness and integrity of the justice system, as it allows for arbitrary decisions that do not comport with principles of equal protection and justice.

**III. Phillips’ Felony False Imprisonment Conviction Obtained By Way of a Nolo Contendere Plea Should Be Reduced to a Misdemeanor Because It Was Never Proven – And There is No Evidence – that the Offense Was Accomplished With “Violence, Menace, Fraud, or Deceit”**

This Court has recognized that:

[T]he plea of nolo contendere has been viewed not as an express admission of guilt but as a consent by the defendant that he may be punished as if he were guilty and a prayer for leniency. Fed.Rule Crim.Proc. 11 preserves this distinction in its requirement that a court cannot accept a guilty plea ‘unless it is satisfied that there is a factual basis for the plea’; there is no similar requirement for pleas of nolo contendere, since it was thought desirable to permit defendants to plead nolo without making any inquiry into their actual guilt. See Notes of Advisory Committee to Rule 11.

*North Carolina v. Alford*, 400 U.S. 25, 36, fn. 8 (1970), emphasis added.

Similarly, in *Davenport*, the court explained that “a ruling holding a defendant to answer is in no way equivalent to a jury’s factual finding or a defendant’s admission[.]” *People v. Davenport*, 71 Cal.App.5th 476, 482 (2021). Further, “[a] defendant is not required to personally admit the truth of the factual basis of the

plea, which may be established by defense counsel's stipulation to a particular document.” *People v. French*, 43 Cal.4th 36, 50-51 (2008). “Thus, absent an indication that a defendant admitted the truth of particular facts, a general stipulation to a factual basis for the plea does not ‘constitute[] a binding admission for all purposes.’” *Id.* at pp. 51-52, *accord*, *People v. Rivera*, 62 Cal.App.5th 217, 235 (2021); *People v. Flores*, 76 Cal. App.5th 974, 990 (2022); and *People v. Hiller*, 91 Cal. App.5th 335, 349 (2023), although defendant stipulated as part of plea that declarations of probable cause established a factual basis for plea, the stipulation was not an admission of the truth of the specific statements in the declarations to support a finding prior convictions of out-of-state robberies were serious or violent felonies in California.

Phillips’ nolo contendere plea constituted an agreement to be convicted of felony false imprisonment without an admission of his actual guilt. The stipulation was not an agreement that all the statements in the police reports describing how the shooting occurred were true. Under *Alford*, the plea of nolo contendere is simply not an express admission of guilt. *Alford*, *supra*, 400 U.S. at p. 36, fn. 8. California cases on this point agree that an attorney’s stipulation to a factual basis does not constitute an admission by the defendant of the truth of specific facts in the applicable document. *See Hiller*, *supra*, 91 Cal.App.5th at p. 349; *Flores*, *supra*, 76 Cal.App.5th at p. 990; *Rivera*, *supra*, 62 Cal. App.5th at p. 235.

Thus, the relevant inquiry is not whether Phillips pleaded nolo contendere to what was described as felony false imprisonment, without proof or admission of any facts establishing elements of a felony. The

issue is whether the false imprisonment was “effected by violence, menace, fraud, or deceit.” If it was not, then the false imprisonment is classified as no more than a wobbler and the court may reduce the charge to a misdemeanor.

In *Feinstein*, the California court expressly recognized it “depends on the trier’s finding as to whether the crime was ‘effected by violence, menace, fraud, or deceit.’ This finding requires a trial on the merits.” *Feinstein*, *supra*, 29 Cal.App.4th at p. 330, quoting *People v. Manning*, 133 Cal.App.3d 159, 163, fn. 1 (1982); *see also Hiller*, *supra*, 91 Cal.App.5th at p. 349; *Flores*, *supra*, 76 Cal.App.5th at p. 990; *Rivera*, *supra*, 62 Cal.App.5th at p. 235. Of course, no such finding was made in this case.

The classification of Phillips’ offense as a felony is unsupported by evidence. The police report, which is the sole piece of evidence of the underlying incident, does not demonstrate any use of violence or menace. Phillips’ actions, while immature, simply do not meet the high threshold required for a felony. According to the official police report, Phillips “slowed down to approximately 5mp . . . [opened] the passenger door . . . [and] then pushed her [Perdue], the victim in the shoulder area-causing her to fall (sic) out of the vehicle.” Perdue did not truly fall from the car. She landed on her feet and had no injury. App.34a. The police report also reflects that she needed no medical treatment as she did not have any injuries. App.33a. When Phillips was taken into custody, he was not armed, did not resist arrest, and was not combative with the officer. Although undeniably immature and affected by Phillips’ youth, these actions do not constitute violence, menace, fraud, or deceit.

California case law supports this finding. In *People v. Matian*, 35 Cal.App.4th 480 (1995), appellant sought review of the judgment of the Superior Court for Los Angeles County after he was convicted of sexual battery by restraint, felony false imprisonment, and genital penetration with a foreign object. The appellant argued that the evidence was insufficient to support the felony false imprisonment conviction because there was no evidence of violence or menace. The California Court of Appeal held that the evidence was insufficient to support a felony false imprisonment conviction, as the evidence was inadequate to establish express or implied threat of harm. The appellate court modified the judgment to reflect a conviction of misdemeanor false imprisonment, as the verdict was contrary to the law. *Id.* at p. 482.

In *Matian*, the appellant had “squeezed [the victim’s] breast sufficiently hard enough to cause her pain, possibly even bruising,” “grabbed her arm,” “yelled at her not to,” and “glared at her as he approached her each time she attempted to leave.” *Id.* at 459, 461. The victim testified that she “was afraid, did not want him [appellant] to touch her again and sat back down.” *Id.*

The court held that there was no evidence presented that constituted express or implied threat of harm; its reasoning of this finding was rooted in the court’s reading of *People v. Babich*, which defined “violence” as “the exercise of physical force used to restrain over and above the force reasonably necessary to effect such restraint.” *People v. Babich*, 35 Cal.App. 4th 480, 482 (1993). “Menace” was defined as “a threat of harm express or implied by word or act.” *Id.* Although despicable, the defendant’s behavior did not

qualify as violence or menace; the court's decision was guided by the prior decisions which upheld convictions for felony false imprisonment involving menace when there was evidence that the defendant used a deadly weapon or verbally threatened harm. *People v. Webber*, 228 Cal.App.3d 1146 (1991) [defendant restrained victim by pointing a gun at her head]; *People v. Raley*, 2 Cal.4th 870, 907 (1992), [the defendant brought children into his camper and told them to take their clothes off. Nearby, he kept a leather belt with a big metal belt buckle on it. The defendant told the children if they did not do what he said, or told anyone about the incident, he would hit them with the belt]; *People v. Magana*, 230 Cal.App.3d 1117 (1991) [after raping the victim, the defendant forced her to walk through a park, while he held her hand, and when she asked him to let go, he threatened to kill her].

As explained, *ante*, the California Court of Appeal in *Matian* held that the appellant's behavior did not support a finding of felony false imprisonment, and modified the judgment to a conviction of misdemeanor false imprisonment under Penal Code 236.

In the present case, Phillips' behavior is not comparable to or consistent with the behavior of the defendants validly convicted of felonies. Thus, the facts in this case fall far below the standard to qualify as use of violence, menace, fraud or deceit. The same is true when comparing Phillips' actions with those described in *Feinstein*, where it was held that the Magistrate erred in modifying defendant's felony false imprisonment conviction to a misdemeanor, given that the evidence presented demonstrated the defendant's use of violence and menace. Defendant "threw himself upon [the victim], slammed her to the wall," "pinned her

with the weight of his body,” “thrust one hand inside [the victim’s] blouse, onto her breast, and the other under her skirt and undergarments to fondle her genital area.” *Feinstein, supra*, 29 Cal.App.4th at p.327.

In slowing down the vehicle to a crawl, opening the passenger door, and pushing Perdue with only enough force that she landed on her feet unscathed, Phillips demonstrated some evident concern for Perdue’s basic safety. App.22a More importantly, Phillips’ actions do not demonstrate violence.

The cases discussed, *ante*, make clear that the statutory definition of violence, menace, fraud, or deceit was a high burden for the prosecution to meet. Given that Phillips was a youth at the time, and that he pleaded *nolo contendere* to the charges without a genuine understanding of the nature of the offense, the prosecution was unreasonably not required to prove these elements.

Thus, absent an indication that a defendant admitted the truth of particular facts, a general stipulation to a factual basis for the plea does not “constitute[] a binding admission for all purposes.” *Rivera, supra*, 62 Cal.App.5th at p. 235.

The facts of the case were never established in any solid form, as the police report—hearsay—was the only evidence considered. Phillips did not elect to go to trial and did not have a meaningful opportunity to challenge the evidence and cross-examine witnesses. It is more likely than not that at a jury trial or bench trial, the prosecution would be unsuccessful in obtaining a felony conviction.

Thus, Phillips’ actions—while immature and impulsive—do not demonstrate any use of “violence,

menace, fraud, or deceit.” As such, Phillips respectfully requests this Court grant writ relief.

#### **IV. The Interests of Justice Warrant Writ Relief**

##### **A. The California Courts Erred in Refusing to Consider Phillips’ Youth and Childhood Trauma in Deciding Whether to Reduce Phillips’ Offense to a Misdemeanor**

It is well-recognized in California and federal law that “a defendant’s youth is a relevant factor in determining whether the defendant acted with reckless indifference to human life” and that “the ‘hallmark features’ of youth—‘among them, immaturity, impetuosity, and failure to appreciate risks and consequences’—are arguably more germane to a juvenile’s mental state than to his or her conduct.” *In re Moore*, 68 Cal.App.5th 434, 454 (2021) quoting *Miller v. Alabama*, 567 U.S. 460, 477 (2012).

Youth is such a crucial factor in determining sentencing that in Senate Bill 567 the California Legislature amended section 1170(b)(6) to guide courts in considering a defendant’s youth. Effective January 1, 2022, Section 1170(b)(6) now provides, in relevant part:

(6) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

- (A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.
- (B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense . . . .”

Thus, amended section 1170 mandates a court to impose the lower term if either trauma or youth—defined in section 1016.7 as a person under 26 years old—was a contributory factor to commission of the offense. (*Id.* at subd. (b)(6).) A defendant is only required to satisfy one contributory factor to warrant imposition of the lower term.

Importantly, section 1170 was passed to provide a mechanism of redress to defendants who have been convicted of murder. Here, Phillips was convicted of false imprisonment which, although not a blameless crime, is far less serious than a murder conviction, to say the least. Indeed, Phillips’ actions did not even result in any physical injury to Perdue. Thus, although Phillips did not file a petition under section 1170, application of that section is, and should be, directly pertinent to consideration of Phillips’ motion under section 17(b). Specifically, Phillips satisfied two of the factors mandating the reduction of the felony to a misdemeanor—he suffered childhood trauma and was a youth at the time of his offense.

Phillips was born on September 17, 1985, and raised by solely his mother in San Francisco. Phillips’ father abandoned him at birth, subjecting him to substantial childhood trauma. App.38a. Phillips struggled

in school, and he was diagnosed with attention deficient disorder and placed in special needs classes. (*Ibid.*) His childhood trauma is an important consideration in determining whether the offense should have been reduced—a factor the trial court refused to consider.

The felony should also be reduced to a misdemeanor based on Phillips' age of 20 and resultant naiveté at the time the incident. As recognized by the California Legislature, consideration of a defendant's youth is a matter of brain development and chemistry, not speculation. Phillips' impulsivity and irrational behavior was biochemically affected by his youth and childhood trauma. With the presence of both factors, it was incumbent on the trial court to at least consider these in deciding whether to reduce the offense. It was an abuse of discretion to flatly refuse to evaluate the impact these factors had on the offense charged. Had Phillips been charged with false imprisonment today, he surely would have had the benefit of newly amended section 1170(b)(6) and would have been charged with a misdemeanor, not a felony.

**B. The California Courts Failed to Consider Whether It Would Be in the Interests of Justice to Reduce Phillips' Conviction to a Misdemeanor**

"The reduction of a wobbler to a misdemeanor is not based on the notion that a wobbler offense is 'conceptually a misdemeanor.'" *Tran, supra*, 242 Cal. App.4th at 886, quoting *Necochea, supra*, 23 Cal.App.3d at p. 1012. "Rather, it is 'intended to extend misdemeanor treatment to a potential felon' and 'extend more lenient treatment to an offender.'" (*Ibid.*)

When the court properly exercises its discretion to reduce a wobbler to a misdemeanor, it has found that felony punishment, and its consequences, are not appropriate for that particular defendant. [Citation.] Such a defendant is not blameless. But by virtue of the court's proper exercise of discretion, neither is such defendant a member of the class of criminals convicted of an offense the Legislature intended to be subject to felony punishment.

*Tran, supra*, 242 Cal.App.4th at 886 quoting *Park, supra*, 56 Cal.4th at pp. 801-802, emphasis added.

While there is “scant judicial authority explicating any criteria that inform the exercise of section 17(b) discretion,” *Tran, supra*, 242 Cal.App.4th at pp. 887-88, the California Supreme Court has established the criteria to be used:

[S]ince all discretionary authority is contextual, those factors that direct similar sentencing decisions are relevant, including ‘the nature and circumstances of the offense, the defendant’s appreciation of and attitude toward the offense, or his [or her] traits of character as evidenced by his [or her] behavior and demeanor at the trial.’ [Citations.] When appropriate, judges should also consider the general objectives of sentencing such as those set forth in California Rules of Court, rule 4.410. The corollary is that even under the broad authority conferred by section 17(b), a determination made outside the perimeters drawn by individualized consideration of the

offense, the offender, and the public interest  
‘exceeds the bounds of reason.’

*Alvarez, supra*, 14 Cal.4th at p. 978.

California Rules of Court, Rule 4.410 prescribes the factors a court must consider in imposing sentence:

- (a) General objectives of sentencing include:
  - (1) Protecting society;
  - (2) Punishing the defendant;
  - (3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses;
  - (4) Deterring others from criminal conduct by demonstrating its consequences;
  - (5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration;
  - (6) Securing restitution for the victims of crime;
  - (7) Achieving uniformity in sentencing; and
  - (8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.

All these factors weigh heavily in favor of reducing Phillips’ offense to a misdemeanor. Phillips has been scrupulously and productively law-abiding for the over 17 years since the incident was committed when he was 20 years old. Maintaining the felony charge after all these years would achieve none of the factors set forth in Rule 4.410, except to punish Phillips without purpose or justification. While Phillips’ actions on the day of the incident were regrettable, he

has paid the price of his actions. Phillips was placed on three years of formal probation and ordered to serve 90 days on the weekend work program, among other terms. He has also unreasonably and unnecessarily been penalized for his misconduct at age 20 by being denied his dream career to protect and serve the community.

In 2013, Phillips moved to Los Angeles and was inspired to pursue a career in public protection. Phillips completed a Security Officer Academy program and earned numerous certifications. App.54a-65a. He was an excellent student, as demonstrated by a letter of recommendation from his criminal justice instructor, Rafael Aguila. He has also proven himself an excellent worker, as described by Carlene Gepner, a business development associate of Los Angeles Community Career Development, Inc., an organization that helps assist individuals with security job placement. Phillips has been a security guard at Walt Disney, ABC Studios, CBS Productions, and other places.

Phillips dream is to return to school and earn a university degree in security studies. He has researched programs at Cambridge and Pepperdine. Phillips wants to pursue his goal of protecting the community, but believes that his past is preventing him from moving forward. After receiving a degree, he hopes to be employed by a vital government agency such as homeland security. Unfortunately, his conviction will prevent him from obtaining that goal. There are many security positions for which Phillips would like to apply, but his options are substantially limited because of his 2005 felony conviction. Phillips has been crime-free and productive for the last 17 years. He has proven that he deserves a chance to advance in his career.

A person's youth and childhood trauma are now rightly recognized as factors in mitigation that a court must consider when making resentencing decisions. Reducing the conviction to a misdemeanor would allow Phillips to truly and fully expunge his record. The Legislature was guided by science research establishing that anyone under the age of 26 has an undeveloped brain. § 1016.7.

Phillips continues to feel great remorse, as he described to the District Attorney's Office: "I [Phillips] feel horrible and think about this incident every-day . . . If I could talk to her [victim] I would tell her how sorry I am and how I wish I could go back in time." App.52a-53a. Since this regrettable incident, Phillips has dedicated himself to a career where he can make his community safer; he explains that "my passion for serving as a security guard stems from this incident as I feel like I owe to the community for my sin." (*Ibid.*)

The evidence is clear that he is deserving of the relief requested. If granted such relief, he would be a benefit to the security industry and the public. "A reduction under section 17(b) is an act of leniency by the . . . court, one that 'may be granted by the court to a seemingly deserving defendant, whereby he [or she] may escape the extreme rigors of the penalty imposed by law for the offense of which he [or she] stands convicted.'" *Tran, supra*, 242 Cal.App.4th at p. 892 quoting *People v. Leach*, 22 Cal.App.2d 525, 527 (1937). Phillips is precisely the type of person deserving of leniency.

Finally, the denial of 17(b) relief to Phillips has broader implications for the justice system. It sets a dangerous precedent which undermines the purpose

of wobbler offenses, *i.e.*, to extend leniency to individuals who have made mistakes but have shown tremendous and positive rehabilitation. By rigidly adhering to a technical interpretation of the law, the California courts failed to recognize the human element of justice and the potential for redemption.



## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 10, 2025