

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS GREGORIO SEGURA,

Defendant and Appellant.

B189791

(Los Angeles County  
Super. Ct. No. KA071474)

ORDER MODIFYING OPINION  
AND DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on October 26, 2006, be modified as follows:

On page 5, at the end of Discussion section 1, insert the following:

The People also assert the trial court lacked authority to modify the jail term because Segura already had served it. Thus, any modification of the jail term necessarily would have to be effected nunc pro tunc. The People disparage the use of a nunc pro tunc order in the situation presented here, asserting the power to issue such an order is limited to “correct[ing] the record of a judgment . . . .” (*Estate of Eckstrom* (1960) 54 Cal.2d 540, 544.) They assert, “[I]t is not proper to amend an order nunc pro tunc to correct judicial inadvertence, omission, oversight or error, or to show what the court might or should have done as distinguished from what it actually did.” (*Hamilton v. Laine* (1997) 57 Cal.App.4th 885, 891.) The People specifically rely on *People v. Borja*

(2002) 95 Cal.App.4th 481, which held a jail term could not be modified nunc pro tunc from 365 days to 364 days in order to avoid deportation of the defendant.

The civil cases cited by the People cannot be squared with the trial court's authority to modify the terms of Segura's probation found in section 1203.3, which does not suggest its application is limited to correcting judicial inadvertence, omission, oversight or error.

*Borja* is more to the point but nonetheless is distinguishable. In *Borja*, the defendant pleaded guilty to driving under the influence and admitted three prior convictions. He was ordered to serve 365 days in jail as a condition of probation. Almost two years after probation expired, the defendant sought a one-day reduction of the jail term to avoid deportation based on changes in immigration law that occurred after his conviction. Following a hearing on the motion, the trial court granted the request over the People's objection.

*Borja* reversed noting a nunc pro tunc order generally is limited to correcting clerical errors. Further, the defendant's complaint did not relate to misadvice regarding the immigration consequences at the time of the plea but subsequent changes in the law that neither defense counsel nor the trial court could have foreseen. *Borja* found changes in federal law did not provide a "valid ground for altering the record of [the defendant's] conviction and retroactively reducing his sentence." (*People v. Borja, supra*, 95 Cal.App.4th at p. 486, fn. omitted.)

*Borja* also noted that although a conviction could be expunged under section 1203.4 following successful completion of probation, an expunged conviction nonetheless may be considered for immigration purposes. *Borja* concluded: "To permit a court, years after a person has pleaded guilty and the term has been served, to obtain a retroactive order altering the record in a manner so that the conviction could not be later used, violates the Legislature's clear intent and the rulings of the federal courts that prior convictions be available for future use, including pursuant to the federal decisions, immigration consequences." (*People v. Borja, supra*, 95 Cal.App.4th at p. 487.)

*Borja* is distinguishable in that the defendant's probation in that case expired almost two years before the defendant requested modification of the jail term. Here, Segura remained on probation at the time of the request. Accordingly, the trial court had continuing authority to modify the terms and conditions of Segura's probation under section 1203.3. The fact Segura already had served the term, in our view, does not preclude the trial court's consideration of Segura's request.

[There is no change in the judgment.]

Respondent's petition for rehearing is denied.