

COPY

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
JOSUE VARGAS MORALES,  
Defendant and Appellant.

SUPREME COURT NO.  
S228030

APPELLATE COURT NO.  
G051142

SUPERIOR COURT NO.  
13WF3934

SUPREME COURT  
FILED

JUL 30 2015

**APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA COUNTY OF ORANGE**

Frank A. McGuire Clerk  
Deputy

Honorable Christopher Evans, Commissioner

**ANSWER TO PETITION FOR REVIEW**

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By appointment of the Court of Appeal  
under Appellate Defenders, Inc.  
Independent Case System

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**ANSWER TO PETITION FOR REVIEW**

Pursuant to California Rules of Court, rules 8.500(a)(2) and 8.504(c)<sup>1</sup>, appellant, Josue Morales, respectfully requests that this Court deny review of the published decision of the Court of Appeal, Fourth Appellate District, Division Three (per Ikola, J.) filed June 26, 2015.

However, if this Court chooses to grant review as requested by the People, appellant requests that this Court also review the first portion of the Court of Appeal's opinion wherein it held that a defendant under Post Release Community Supervision (PRCS) is still serving their original

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<sup>1</sup> All further rule and section references are to the California Rules of Court and California Penal Code unless otherwise noted.

felony sentence and are therefore subject to the imposition of parole under section 1170.18, subdivisions (a) and (d).

## **ANSWER TO PETITION FOR REVIEW**

### **I.**

#### **REVIEW IS NOT REQUIRED BECAUSE THE COURT OF APPEAL CORRECTLY CONCLUDED UNDER ESTABLISHED AUTHORITY THAT BECAUSE SECTION 1170.18 INCLUDES THE IMPOSITION OF PAROLE A PETITIONER MUST BE GIVEN FULL CREDIT FOR HIS PREVIOUSLY SERVED CUSTODY (ACTUAL AND CONDUCT CREDITS).**

The law has long been settled that custody credits (actual and conduct) apply to reduce a defendant's period of parole. (*In re Sosa* (1980) 102 Cal.App.3d 1002, 1006.) "Where the presentence credits exceed the total state prison term, the excess credits, commonly known as *Sosa* credits are deducted from the defendant's parole period." (*People v. Espinoza* (2014) 226 Cal.App.4th 635, 638.)

The right to apply excess credits to an inmate's parole term has been recognized to apply to a vast array of situations, including where an inmate has served more time in prison custody than he ultimately was required to serve for the offenses. (See sections 1170, subd. (a)(3) and 2900.5; *In re Lira* (2014) 58 Cal.4th 573, 582 [listing numerous scenarios where pre and post sentence custody and conduct credits must be applied to period of

parole.]; *In re Ballard* (1981) 115 Cal.App.3d 647, 649.) If the excess credits exceed the entire parole period, the prisoner is entitled to be discharged unconditionally. (§§ 1170, subd. (a)(3), 2900.5, subds. (a), (c); Cal. Code Regs., tit. 15, § 2345; see *In re Carter* (1988) 199 Cal.App.3d 271, 273.)

“The enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted.” (*People v. Weidert* (1985) 39 Cal.3d 836, 844.) If the enactors of a statute do not **expressly** change the impact of existing law, they are presumed to have intended that it be left as it existed. “The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended.” (*Estate of McDill* (1975) 14 Cal.3d 831, 837-38.)

Here, by explicitly stating that the petitioner is to be placed on parole rather than PRCS, without any express limitations, the drafters and enactors of Prop 47 are presumed to have meant parole in its precise legal meaning and function. (*Estate of McDill, supra*, 14 Cal.3d at pp. 837-38.)

Furthermore, section 1170.18 expressly disclaims any intent to change the existing rules and statutes controlling the application of excess credits to parole terms. Section 1170.18, subdivision (m) expressly states

that “Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.” This language alone defeats the People’s argument because denying credits to Prop 47 petitioners who are placed on parole would be affirmatively abrogating rather than preserving their rights under *Sosa* and sections 2900.5 and 1170, subdivision (a)(3).<sup>2</sup>

As noted in the Court of Appeal’s opinion, on June 17, 2015, Division Six of the Second Appellate District summarily held in *People v. Hickman* (2015, B260928) \_\_\_ Cal.App.4th \_\_\_ (2015 Cal.App.Lexis 519), that *Sosa* credits do not apply to Prop 47 misdemeanor parole. A petition for review has been filed in *Hickman* (July 22, 2015; S227964).

The Court of Appeal herein accurately refuted the holding of *Hickman* (Opinion pp. 8-10) and appellant asserts that this Court should depublish *Hickman* rather than grant review in that or this matter.

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<sup>2</sup> Contrast section 3451, subdivision (a) which reads “Notwithstanding any other provision of law...all persons released from prison... for a period not exceeding three years...shall...be subject to community supervision....” The phrase, “[n]otwithstanding any other law” is all encompassing and eliminates potential conflicts between alternative sentencing schemes. (See, *Espinoza* at pp. 639-640.) Section 1170.18, subdivision (m) functions exactly opposite by recognizing the continued validity of rights and remedies otherwise available, which would include *Sosa* credits.

**ADDITIONAL ISSUE FOR CONSIDERATION  
IF REVIEW IS GRANTED**

**I.**

**HAS A PROP 47 PETITIONER ON POST RELEASE COMMUNITY SUPERVISION (PRCS) “COMPLETED HIS SENTENCE” AS THAT TERM IS USED IN SECTION 1170.18 SUCH THAT HE QUALIFIES FOR RELIEF UNDER SECTION 1170.18, SUBDIVISION (F)?**

Prior to reaching the credits issue upon which the People are seeking review, the Court of Appeal considered whether a person on PRCS has completed their sentence for purposes of determining which portion of section 1170.18 applies to their petition. (Opinion pp. 3-7.) The court concluded that PRCS is part of a felony sentence and therefore section 1170.18, subdivision (a) applies to those persons filing a Prop 47 petition while on PRCS. (Opinion pp. 5.)

If the People’s request for review is granted, appellant requests that review additionally be granted as to the above portion of opinion. Such review would allow this Court the opportunity to (1) address the contrary holding in *People v. Espinoza* (2014) 226 Cal.App.4th 635, 638-640, that the period of PRCS under section 3451 is not part of the “sentence” or the “term of imprisonment” (*Ibid*) and (2) expound on this Court’s statement in *People v. Nuckles* (2013) 56 Cal.4th 601, 609 that “parole constitutes a distinct phase from the underlying prison sentence.....”



## CONCLUSION

For the reasons stated above review should not be granted. However, if review is granted, appellant requests that the additional issue set forth above also be considered.

Respectfully submitted,

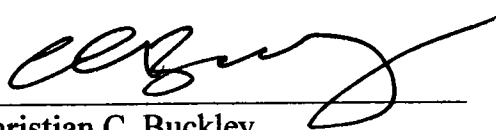
A handwritten signature in black ink, appearing to read 'C.C. Buckley', written over a horizontal line.

Christian C. Buckley  
Attorney for Appellant

**CERTIFICATE OF WORD COUNT COMPUTATION**  
**Cal. Rules of Court, rule 8.204(c)(1)**

The text of this answer consists of 1,068 words as counted by the Microsoft  
Word Processing Program used to prepare this document.

Dated: July 28, 2015



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Christian C. Buckley  
Attorney for Appellant

*People v. Morales*  
Supreme Court No. S228030  
Court of Appeal No. G051142

**PROOF OF SERVICE BY MAIL**  
(Cal. Rules of Court, rules 1.21, 8.50.)

The undersigned declares that I am a citizen of the United States, over eighteen years of age, not a party to this cause, an attorney authorized to practice in the State of California, and my business address is 9921 Carmel Mountain Rd. #355, San Diego, CA 92129.

That I served the following document(s): **Appellant's Answer to Petition for Review** by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

Orange County District Attorney  
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Josue Morales  
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(Cal. Rules of Court, rules 2.251(i)(1)(A)-(D) & 8.71(f)(1)(A)-(D).)

Furthermore, the undersigned declares, that I electronically served from my electronic service address of [ccbuckley75@gmail.com](mailto:ccbuckley75@gmail.com) the above-referenced document on 7/28/15 at approximately 10:00 am to the following entities:

1. Appellate Defender's Inc.: [e-service-criminal@adi-sandiego.com](mailto:e-service-criminal@adi-sandiego.com)
2. Attorney General's Office: [ADIEService@doj.ca.gov](mailto:ADIEService@doj.ca.gov)
3. Court of Appeal E-Submission: <http://www.courts.ca.gov/4dca-esub.htm>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 28, 2015

  
Christian C. Buckley